CHAPTER 101
GENERAL RULES
§§101.1-101.30
Effective July 16, 1997

§101.1. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Account - Any combination of facilities or sources, including federal sources, as defined in the Texas Clean Air Act (Title 5, Texas Health and Safety Code, §382.003) where the combined facilities or sources are:

(A) under common ownership, management, and control; and

(B) located on contiguous property or on properties that are contiguous except for intervening road, railroads, rights-of-way, waterways, or the like.

Acid gas flare - A flare used exclusively for the incineration of hydrogen sulfide and other acidic gases derived from natural gas sweetening processes.

Act - The TCAA, Texas Health and Safety Code, Chapter 382.

Alcohol (used in offset lithographic printing) - For the purposes of complying with §§115.442, 115.443, 115.445, 115.446, and 115.449 of this title (relating to Offset Lithographic Printing), an alcohol is any of the hydroxyl containing organic compounds with a molecular weight equal to or less than 74.12 (which includes methanol, ethanol, propanol, and butanol).

Alcohol substitutes (used in offset lithographic printing) - Nonalcohol additives that contain volatile organic compounds and are used in the fountain solution. Some additives are used to reduce the surface tension of water; others (especially in the newspaper industry) are added to prevent piling (ink build-up).

Ambient air - That portion of the atmosphere, external to buildings, to which the general public has access.

Architectural coating - Any protective or decorative coating applied to the interior or exterior of a building or structure, including latex paint, alkyd paints, stains, lacquers, varnishes, and urethanes. Excluded from this definition are paints sold in containers of one quart or less; paints used on roadways, pavement, swimming pools, and similar surfaces; aerosol spray products; and concentrated color additives.

Article - When followed by a number, "article" refers to provisions of the law as codified in Texas Civil Statutes, 1925, as amended.

Automotive basecoat/clearcoat system (used in vehicle refinishing (body shops)) - A topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion. The volatile organic compound (VOC) content of a basecoat (bc)/clearcoat (cc) system shall be calculated according to the following formula:

$$VOC\ T_{bc/cc} = \frac{VOC_{bc} + (2 \times VOC_{cc})}{3}$$

where: $VOC\ T_{bc/cc}$ is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, in the basecoat/clearcoat system;

VOC_{bc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given basecoat; and

VOC_{cc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given clearcoat.

Automotive precoat (used in vehicle refinishing (body shops)) - Any coating that is applied to bare metal to deactivate the metal surface for corrosion resistance to a subsequent water-based primer. This coating is applied to bare metal solely for the prevention of flash rusting.

Automotive pretreatment (used in vehicle refinishing (body shops)) - Any coating which contains a minimum of 0.5% acid by weight that is applied directly to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion.

Automotive primer or primer surfacers (used in vehicle refinishing (body shops)) - Any base coat, sealer, or intermediate coat which is applied prior to colorant or aesthetic coats.

Automotive sealers (used in vehicle refinishing (body shops)) - Coatings that are formulated with resins which, when dried, are not readily soluble in typical solvents. These coatings act as a shield for surfaces over which they are sprayed by resisting the penetration of solvents which are in the final topcoat.

Automotive specialty coatings (used in vehicle refinishing (body shops)) - Coatings or additives which are necessary due to unusual job performance requirements. These coatings or additives prevent the occurrence of surface defects and impart or improve desirable coating properties. These products include, but are not limited to, uniform finish blenders, elastomeric materials for coating of flexible plastic parts, coatings for non-metallic parts, jambing clear coatings, gloss flatteners, and anti-glare/safety coatings.

Automotive three-stage system (used in vehicle refinishing (body shops)) - A topcoat system composed of a pigmented basecoat portion, a semitransparent midcoat portion, and a transparent clearcoat portion. The volatile organic compound (VOC) content of a three-stage system shall be calculated according to the following formula:

$$VOC\ T_{3\text{-}stage} = \frac{VOC_{bc} + VOC_{mc} + (2 \times VOC_{cc})}{4}$$

where: $VOC\ T_{3\text{-}stage}$ is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, in the three-stage system;

VOC_{bc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given basecoat;

VOC_{mc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given midcoat; and

VOC_{cc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given clearcoat.

Automotive wipe-down solutions (used in vehicle refinishing (body shops)) - Any solution used for cleaning and surface preparation.

Background - Background concentration, the level of air contaminants that cannot be reduced by controlling emissions from man-made sources. It is determined by measuring levels in nonurban areas.

Bakery oven - An oven for baking bread or any other yeast-leavened products.

Batch (used in offset lithographic printing) - A supply of fountain solution that is prepared and used without alteration until completely used or removed from the printing process.

Capture efficiency - The amount of VOC collected by a capture system which is expressed as a percentage derived from the weight per unit time of VOC entering a capture system and delivered to a control device divided by the weight per unit time of total VOC generated by a source of VOC.

Capture system - All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

Captured facility - A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

Carbon adsorber - An add-on control device which uses activated carbon to adsorb VOC from a gas stream.

Carbon adsorption system - A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

Cleaning solution (used in offset lithographic printing) - Liquids used to remove ink and debris from the operating surfaces of the printing press and its parts.

Clear coat (used in wood parts and products coating) - A coating which lacks opacity or which is transparent and uses the undercoat as a reflectant base or undertone color.

Clear sealers (used in wood parts and products coating) - Liquids applied over stains, toners, and other coatings to protect these coatings from marring during handling and to limit absorption of succeeding coatings.

Coating - A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

Coating application system - Devices or equipment designed for the purpose of applying a coating material to a surface. The devices may include, but not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, knife coaters, and extrusion coaters.

Coating line - An operation consisting of a series of one or more coating application systems and including associated flashoff area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried, or cured.

Cold solvent cleaning - A batch process that uses liquid solvent to remove soils from the surfaces of metal parts or to dry the parts by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

Combustion unit - Any boiler plant, furnace, incinerator, flare, engine, or other device or system used to oxidize solid, liquid, or gaseous fuels, but excluding motors and engines used in propelling land, water, and air vehicles.

Commercial hazardous waste management facility - Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility which disposes only waste generated on-site or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

Commercial incinerator - An incinerator used to dispose of waste material from retail and wholesale trade establishments (see also: Incinerator).

Commercial medical waste incinerator - A facility that accepts for incineration medical waste generated outside the property boundaries of the facility.

Component - A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves, which has the potential to leak volatile organic compounds.

Condensate - Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.

Construction-demolition waste - Waste resulting from construction or demolition projects.

Consumer-solvent products - Products sold or offered for sale by wholesale or retail outlets for individual, commercial, or industrial use which may contain volatile organic compounds, including household products, toiletries, aerosol products, rubbing compounds, windshield washer fluid, polishes and waxes, nonindustrial adhesives, space deodorants, moth control products, or laundry treatments.

Control device - Equipment (such as an incinerator or carbon adsorber) used to reduce, by destruction or removal, the amount of air pollutant(s) in an air stream prior to discharge to the ambient air.

Control system - A combination of one or more capture system(s) and control device(s) working in concert to reduce discharges of air pollutants to the ambient air.

Conveyorized degreasing - A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of metal parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.

Custody transfer - The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

De minimis impact - A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source which has undergone a major modification, which does not exceed the following specified amounts.

AIR CONTAMINANT	ANNUAL	24-HOUR	8-HOUR	3-HOUR	1-HOUR
INHALABLE PARTICULATE MATTER (PM_{10})	1.0 $\mu g/m^3$	5 $\mu g/m^3$			
SULFUR DIOXIDE	1.0 $\mu g/m^3$	5 $\mu g/m^3$		25 $\mu g/m^3$	
NITROGEN DIOXIDE	1.0 $\mu g/m^3$				
CARBON MONOXIDE			0.5 mg/m^3		2 mg/m^3

Domestic wastes - The garbage and rubbish normally resulting from the functions of life within a residence.

Downwind level - The concentration of air contaminants from a source or sources on a property as measured at or beyond the property boundary.

Drum (metal) - Any cylindrical metal shipping container with a nominal capacity equal to or greater than 12 gallons (45.4 liters) but equal to or less than 110 gallons (416 liters).

Emissions banking - A system for recording emissions reduction credits so they may be used or transferred for future use.

Emissions reduction credit (ERC) - Any stationary source emissions reduction which has been banked in accordance with §101.29 of this title (relating to Emissions Banking).

Emissions reduction credit certificate - The certificate issued by the executive director which indicates the amount of qualified reduction available for use as offsets and the length of time the reduction is eligible for use.

Emissions unit - Any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act.

Exempt solvent - Those carbon compounds or mixtures of carbon compounds used as solvents which have been excluded from the definition of volatile organic compound.

External floating roof - A cover or roof in an open top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them.

Extreme performance coating - A coating intended for exposure to extreme environmental conditions, such as continuous outdoor exposure; temperatures frequently above 95°C (203°F); detergents; abrasive and scouring agents; solvents; and corrosive solutions, chemicals, or atmospheres.

Federal motor vehicle regulation - The Motor Vehicle Air Pollution Standards, 45 Code of Federal Regulations (CFR), Subtitle A, Part 85.

Federally enforceable - All limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 CFR 52.21, or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under the United States Environmental Protection Agency (EPA)-approved program that is incorporated into the state implementation plan and that expressly requires adherence to any permit issued under such program.

Final repair coat (used in wood parts and products coating) - Liquids applied to correct imperfections or damage to the topcoat.

Flexographic printing process - A method of printing in which the image areas are raised above the nonimage areas, and the image carrier is made of an elastomeric material.

Forage - Any vegetation which may be consumed by animals.

Fountain solution (used in offset lithographic printing) - A mixture of water, nonvolatile printing chemicals, and an additive (liquid) that reduces the surface tension of the water so that it spreads easily across the printing plate surface. The fountain solution wets the nonimage areas so that the ink is maintained within the image areas. Isopropyl alcohol, a VOC, is the most common additive used to reduce the surface tension of the fountain solution.

Fuel oil - Any oil meeting The American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM D 396-86, Standard Specifications for Fuel Oils. This includes fuel oil grades 1, 2, 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

Fugitive emission - Any gaseous or particulate contaminant entering the atmosphere which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

Garbage - Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, and handling and sale of produce and other food products.

Gasoline - Any petroleum distillate having a Reid vapor pressure of four pounds per square inch (27.6 kPa) or greater which is produced for use as a motor fuel and is commonly called gasoline.

Gasoline bulk plant - A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over any consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.

Gasoline terminal - A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over any consecutive 30-day period.

Hand-held lawn and garden and utility equipment - Equipment that requires its full weight to be supported by the operator to perform its function and requires multi-positional operation.

Hazardous wastes - Any solid waste identified or listed as a hazardous waste by the administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code (USC) 6901 et seq. as amended.

Hazardous waste management facility - All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

Hazardous waste management unit - A landfill, surface impoundment, waste pile, boiler, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

Heatset (used in offset lithographic printing) - Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.

High-bake coatings - Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

High-volume low-pressure spray guns - Equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 pounds per square inch gauge air pressure.

Incinerator - An enclosed combustion apparatus and appurtenances thereto which is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and which is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device which burns 10% or more of solid waste on a total Btu heat input basis averaged over any one-hour period shall be considered an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning one percent or more of solid waste on a total Btu heat input basis averaged annually shall also be considered an incinerator.

An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director.

Industrial boiler - A boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

Industrial furnace - Cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the Texas Water Commission may list.

Industrial solid waste - Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows:

(A) Class I industrial solid waste or Class I waste is any industrial solid waste designated as Class I by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 of this title (relating to Definitions) and §335.505 of this title (relating to Class I Waste Determination).

(B) Class II industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class I or Class III, as defined in §335.506 of this title (relating to Class II Waste Determination).

(C) Class III industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class III Waste Determination).

Inorganic fluoride compounds - All inorganic chemicals having an atom or atoms of fluorine in their chemical structure.

Internal floating cover - A cover or floating roof in a fixed roof tank which rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

Leak - A volatile organic compound concentration greater than 10,000 parts per million by volume (ppmv) or the amount specified by applicable rule, whichever is lower; or the dripping or exuding of process fluid based on sight, smell, or sound.

Liquid fuel - A liquid combustible mixture, not derived from hazardous waste, with a higher heating value of at least 5,000 Btu per pound.

Liquid-mounted seal - A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

Lithography (used in offset lithographic printing) - A printing process where the image and nonimage areas are chemically differentiated; the image area is oil receptive, and the nonimage area is water receptive. This method differs from other printing methods, where the image is a raised or recessed surface.

Low-bake coatings - Coatings designed to cure at temperatures of 194 degrees Fahrenheit or less.

Maintenance area - A geographic region of the state previously designated nonattainment pursuant to the FCAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under the FCAA, §175A, as amended. The following are the maintenance areas within the state: Victoria Ozone Maintenance Area (60 FR 12453) - Victoria County.

Major upset - An unscheduled occurrence or excursion of a process or operation that results in an emission of air contaminants that contravenes the TCAA and is beyond immediate control, or a release that is initiated to protect life in the immediate or adjacent areas.

Marine vessel - Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.

Mechanical shoe seal - A metal sheet which is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

Medical waste - Waste materials identified by the Texas Department of Health as "Special Waste from Health Care-Related Facilities" and those waste materials commingled and discarded with special waste from health care-related facilities.

Mobile source emissions reduction credit (MERC) - The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emissions reduction generated by a mobile source as set forth in §114.29 of this title (relating to Accelerated Vehicle Retirement Program) or §114.11 of this title (relating to Alternative Fuel Requirements for Motor Vehicle Fleets), and which has been banked in accordance with §101.29 of this title.

Motor vehicle - A self-propelled vehicle designed for transporting persons or property on a street or highway.

Motor vehicle fuel dispensing facility - Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

Municipal solid waste - Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste except industrial solid waste.

Municipal solid waste facility - All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

Municipal solid waste landfill - A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 257.2 of 40 CFR, Part 257. A municipal solid waste landfill (MSWLF) unit also may receive other types of Resource Conservation and Recovery Act (RCRA) Subtitle D wastes, such as commercial solid waste, non-hazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

Municipal solid waste landfill emissions - Any gas derived from a natural process through the decomposition of organic waste deposited in a municipal solid waste disposal site or from the volatile organic compounds in the waste.

Natural gas/gasoline processing - A process that extracts condensate, as defined in §101.1 of this title (relating to Definitions) from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The

following facilities shall be included in this definition if, and only if, located on the same property as a natural gas/gasoline processing operation defined previously: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquified natural gas units, and field gas gathering systems.

Net ground-level concentration - The upwind level subtracted from the downwind level.

New source - Any stationary source, the construction or modification of which is commenced after the date of adoption of Chapter 101 of this title (relating to General Rules).

Nonattainment area - A defined region within the state which is designated by EPA as failing to meet the National Ambient Air Quality Standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of the Federal Clean Air Act, §107(d). For the official list and boundaries of nonattainment areas, see the Code of Federal Regulations (40 CFR Part 81) and pertinent Federal Register notices. The following areas comprise the nonattainment areas within the state:

(A) Carbon monoxide (CO). El Paso (ELP) CO nonattainment area (56 FR 56694) - Classified as a Moderate CO nonattainment area with a design value $\leq$ 12.7 parts per million. Portion of El Paso County. Portion of the city limits of El Paso: That portion of the city of El Paso bounded on the north by Highway 10 from Porfirio Diaz Street to Raynolds Street, Raynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Raynolds Street to Highway 62, Highway 62 from the Southern Pacific Railroad lines to Highway 20, and Highway 20 from Highway 62 to Polo Inn Road. Bounded on the east by Polo Inn Road from Highway 20 to the Texas-Mexico border. Bounded on the south by the Texas-Mexico border from Polo Inn Road to Porfirio Diaz Street. Bounded on the west by Porfirio Diaz Street from the Texas-Mexico border to Highway 10.

(B) Inhalable particulate matter (PM_{10}). El Paso (ELP) PM_{10} nonattainment area (56 FR 56694) - Classified as a Moderate PM_{10} nonattainment area. Portion of El Paso County which comprises the El Paso city limit boundaries as they existed on November 15, 1990.

(C) Lead. Collin County lead nonattainment area (56 FR 56694) - Portion of Collin County. Eastside: Starting at the intersection of south Fifth Street and the fence line approximately 1000 feet south of the Gould National Batteries (GNB) property line going north to the intersection of south Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1000 feet south of the GNB property line; Southside: Fence line approximately 1000 feet south of the GNB property line.

(D) Nitrogen Dioxide (NO_2). No designated nonattainment areas.

(E) Ozone.

(i) Houston/Galveston (HGA) ozone nonattainment area (56 FR 56694) - Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso (ELP) ozone nonattainment area (56 FR 56694) - Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont/Port Arthur (BPA) ozone nonattainment area (61 FR 14496) - Classified as a Moderate ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iv) Dallas/Fort Worth (DFW) ozone nonattainment area (56 FR 56694) - Classified as a Moderate ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Sulfur Dioxide (SO_2). No designated nonattainment areas.

Non-flat architectural coating - Any coating which registers a gloss of 15 or greater on an 85° gloss meter or five or greater on a 60° gloss meter, and which is identified on the label as gloss, semi-gloss, or eggshell enamel coating.

Non-heatset (used in offset lithographic printing) - Any operation where the printing inks are set without the use of heat. For the purposes of this rule, ultraviolet-cured and electron beam-cured inks are considered non-heatset.

Nonattainment area - A defined region within the State which is designated by EPA as failing to meet the National Ambient Air Quality Standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of the Federal Clean Air Act, §107(d).

Offset lithography - A printing process that transfers the ink film from the lithographic plate to an intermediary surface (blanket), which, in turn, transfers the ink film to the substrate.

Opacity - The degree to which an emission of air contaminants obstructs the transmission of light expressed as the percentage of light obstructed as measured by an optical instrument or trained observer.

Opaque ground coats and enamels (used in wood parts and products coating) - Colored, opaque liquids applied to wood or wood composition substrates which completely hide the color of the substrate in a single coat.

Open-top vapor degreasing - A batch solvent cleaning process that is open to the air and which uses boiling solvent to create solvent vapor used to clean or dry metal parts through condensation of the hot solvent vapors on the colder metal parts.

Outdoor burning - Any fire or smoke-producing process which is not conducted in a combustion unit.

Packaging rotogravure printing - Any rotogravure printing upon paper, paper board, metal foil, plastic film, or any other substrate which is, in subsequent operations, formed into packaging products or labels.

Pail (metal) - Any cylindrical metal shipping container with a nominal capacity equal to or greater than one gallon (3.8 liters) but less than 12 gallons (45.4 liters) and constructed of 29 gauge or heavier material.

Particulate matter - Any material, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions.

Particulate matter emissions - All finely-divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by EPA Reference Method 5, as specified at Part 60, Appendix A of 40 CFR, modified to include particulate caught by impinger train; by an equivalent or alternative method, as specified at Part 51 of 40 CFR; or by a test method specified in an approved State Implementation Plan.

Petroleum refinery - Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

PM_{10} - Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of Part 50 of 40 CFR and designated in accordance with Part 53 of 40 CFR, or by an equivalent method designated with that Part 53.

PM_{10} emissions - Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in Part 51 of 40 CFR or by a test method specified in an approved State Implementation Plan.

Polychlorinated biphenyl compound - A compound subject to Title 40, CFR Part 761.

Polymer and resin manufacturing process - A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.

Population equivalent - The hypothetical population which would generate an amount of solid waste equivalent to that actually being processed or disposed of based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals.

Pounds of VOC per gallon of coating (minus water and exempt solvents) - Basis for emission limits for surface coating processes. Can be calculated by the following equation:

$$\textit{Pounds of VOC per gallon of coating (minus water and exempt solvents)} = \frac{W_v}{V_m - V_w - V_{es}}$$

Where: W_v = weight of VOC, in pounds, contained in V_m gallons of coating
V_m = volume of coating, generally assumed to be one gallon
V_w = volume of water, in gallons, contained in V_m gallons of coating
V_{es} = volume of exempt solvents, in gallons, contained in V_m gallons of coating

Pounds of VOC per gallon of solids - Basis for emission limits for surface coating processes. Can be calculated by the following equation:

$$\textit{Pounds of VOC per gallon of solids} = \frac{W_v}{V_m - V_v - V_w - V_{es}}$$

Where: W_v = weight of VOC, in pounds, contained in V_m gallons of coating
V_m = volume of coating, generally assumed to be one gallon
V_v = volume of VOC, in gallons, contained in V_m gallons of coating
V_w = volume of water, in gallons, contained in V_m gallons of coating
V_{es} = volume of exempt solvents, in gallons, contained in V_m gallons of coating

Printing line - An operation consisting of a series of one or more printing processes and including associated drying areas.

Process or processes - Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

Process weight per hour - "Process weight" is the total weight of all materials introduced or recirculated into any specific process which may cause any discharge of air contaminants into the atmosphere. Solid fuels charged into the process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The "process weight per hour" will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion there of, excluding any time during which the equipment used to conduct the process is idle. For continuous operation, the "process weight per hour" will be derived by dividing the total process weight for a 24-hour period by 24.

Property - All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

Publication rotogravure printing - Any rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed materials.

Reasonable further progress - Annual incremental reductions in emissions of the applicable air contaminant which are sufficient to provide for attainment of the applicable national ambient air quality standard in the designated nonattainment areas by the date required in the State Implementation Plan.

Remote reservoir cold solvent cleaning - Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.

Rotogravure printing - The application of words, designs, and/or pictures to any substrate by means of a roll printing technique which involves a recessed image area. The recessed area is loaded with ink and pressed directly to the substrate for image transfer.

Rubbish - Nonputrescible solid waste, consisting of both combustible and noncombustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1,600°F to 1,800°F).

Semitransparent spray stains and toners (used in wood parts and products coating) - Colored liquids applied to wood to change or enhance the surface without concealing the surface, including, but not limited to, toners and nongrain-raising stains.

Semitransparent wiping and glazing stains (used in wood parts and products coating) - Colored liquids applied to wood that require multiple wiping steps to enhance the grain character and to partially fill the porous surface of the wood.

Shellacs (used in wood parts and products coating) - Clear or pigmented coatings formulated solely with the resinous secretions of the lac beetle (laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

Sludge - Any solid or semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.

Smoke - Small gas-born particles resulting from incomplete combustion consisting predominately of carbon and other combustible material and present in sufficient quantity to be visible.

Solid waste - Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under the Natural Resources Code, 91.101, unless the waste,

substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the Administrator of EPA under the federal Solid Waste Disposal Act, as amended by the RCRA as amended (42 USC, 6901 et seq).

Sour gas - Any natural gas containing more than 1.5 grains of hydrogen sulfide per 100 cubic feet, or more than 30 grains of total sulfur per 100 cubic feet.

Sour crude - A crude oil which will emit a sour gas when in equilibrium at atmospheric pressure.

Source - A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

Special waste from health care-related facilities - A solid waste which if improperly treated or handled may serve to transmit infectious disease(s) and which is comprised of the following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

Standard conditions - A condition at a temperature of 68°F (20°C) and a pressure of 14.7 pounds per square inch absolute (101.3 kPa). Pollutant concentrations from an incinerator will be corrected to a condition of 50% excess air if the incinerator is operating at greater than 50% excess air.

Standard metropolitan statistical area - An area consisting of a county or one or more contiguous counties which is officially so designated by the United States Bureau of the Budget.

Submerged fill pipe - A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 cm) from the bottom or, when applied to a tank which is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

Sulfur compounds - All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

Sulfuric acid mist/sulfuric acid - Emissions of sulfuric acid mist and sulfuric acid are considered to be the same air contaminant calculated as H_2SO_4 and shall include sulfuric acid liquid mist, sulfur trioxide, and sulfuric acid vapor as measured by Test Method 8 in Title 40 CFR, Part 60, Appendix A.

Surface coating processes - Operations which utilize a coating application system.

(A) **Large appliance coating** - The coating of doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other large appliances.

(B) **Metal furniture coating** - The coating of metal furniture (tables, chairs, waste baskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products) or the coating of any metal part which will be a part of a nonmetal furniture product.

(C) **Coil coating** - The coating of any flat metal sheet or strip supplied in rolls or coils.

(D) **Paper coating** - The coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film) and related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape) and metal foil (including decorative, gift wrap, and packaging).

(E) **Fabric coating** - The application of coatings to fabric, which includes rubber application (rainwear, tents, and industrial products such as gaskets and diaphragms).

(F) **Vinyl coating** - The use of printing or any decorative or protective topcoat applied over vinyl sheets or vinyl-coated fabric.

(G) **Can coating** - The coating of cans for beverages (including beer), edible products (including meats, fruit, vegetables, and others), tennis balls, motor oil, paints, and other mass-produced cans.

(H) **Automobile coating** - The assembly-line coating of passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.

(I) **Light-duty truck coating** - The assembly-line coating of motor vehicles rated at 8,500 pounds (3,855.5 kg) gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pickups, vans, and window vans.

(J) **Miscellaneous metal parts and products coating** - The coating of miscellaneous metal parts and products in the following categories:

(i) large farm machinery (harvesting, fertilizing, and planting machines, tractors, combines, etc.);

(ii) small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(iii) small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(iv) commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(v) industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(vi) fabricated metal products (metal-covered doors, frames, etc.); and

(vii) any other category of coated metal products, except the specified list in subparagraphs (A)-(I) of surface coating processes, including, but not limited to, those which are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries).

(K) **Factory surface coating of flat wood paneling** - Coating of flat wood paneling products, including hardboard, hardwood plywood, particle board, printed interior paneling, and tileboard.

(L) **Mirror backing coating** - The application of coatings to the silvered surface of a mirror.

(M) **Wood parts and products coating** - The coating of wood parts and products, excluding factory surface coating of flat wood paneling.

Sweet crude oil and gas - Those crude petroleum hydrocarbons that are not "sour" as defined in this section.

Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch distillation operation - A SOCMI noncontinuous distillation operation in which a discrete quantity or batch of liquid feed is charged into a distillation unit and distilled at one time. After the initial charging of the liquid feed, no additional liquid is added during the distillation operation.

Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch process - Any SOCMI noncontinuous reactor process which is not characterized by steady-state conditions, and in which reactants are not added and products are not removed simultaneously.

Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation operation - A SOCMI operation separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor-phase as they approach equilibrium within the distillation unit.

Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation unit - A SOCMI device or vessel in which distillation operations occur, including all associated internals (including, but not limited to, trays and packing), accessories (including, but not limited to, reboilers, condensers, vacuum pumps, and steam jets), and recovery devices (such as absorbers, carbon adsorbers, and condensers) which are capable of, and used for, recovering chemicals for use, reuse, or sale.

Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor process - A SOCMI unit operation in which one or more chemicals, or reactants other than air, are combined or decomposed in such a way, that their molecular structures are altered and one or more new organic compounds are formed.

Synthetic organic chemical manufacturing process - A process that produces, as intermediates or final products, one or more of the chemicals listed in Table I of this section.

System or device - Any article, chemical, machine, equipment, or other contrivance, the use of which may eliminate, reduce, or control the emission of air contaminants to the atmosphere.

Tank-truck tank - Any storage tank having a capacity greater than 1,000 gallons, mounted on a tank-truck or trailer. Vacuum trucks used exclusively for maintenance and spill response are not considered to be tank-truck tanks.

Topcoat (used in wood parts and products coating) - A clear liquid which provides the final protective and aesthetic properties to wood finishes.

Total suspended particulate - Particulate matter as measured by the method described in Appendix B of 40 CFR, Part 50.

Transfer efficiency - The amount of coating solids deposited onto the surface of a part or product divided by the total amount of coating solids delivered to the coating application system.

Transport vessel - Any land-based mode of transportation (truck or rail) that is equipped with a storage tank having a capacity greater than 1,000 gallons which is used primarily to transport oil, gasoline, or other volatile organic liquid-bulk cargo. Vacuum trucks used exclusively for maintenance and spill response are not considered to be transport vessels.

True partial pressure - The absolute aggregate partial pressure (pounds per square inch absolute) of all VOC in a gas stream.

True vapor pressure - The absolute aggregate partial vapor pressure (pounds per square inch absolute) of all volatile organic compounds at the temperature of storage, handling, or processing.

Upwind level - The representative concentration of air contaminants flowing onto a property as measured at any point.

Utility boiler - A boiler used to produce electric power, steam, or heated or cooled air or other gases or fluids for sale.

Vapor balance system - A system which provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.

Vapor-mounted seal - A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

Vapor recovery system - Any control system which utilizes vapor collection equipment to route VOC to a control device that reduces VOC emissions.

Vapor-tight - Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in the Regulations.

Varnishes (used in wood parts and products coating) - Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.

Vent - Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

Vehicle refinishing (body shops) - The repair and recoating of vehicles, including, but not limited to, motorcycles, passenger cars, vans, light-duty trucks, medium-duty trucks, heavy-duty trucks, buses, and other vehicle body parts, bodies, and cabs by a commercial operation other than the original manufacturer. The repair and recoating of trailers and construction equipment are not included.

Visible emissions - Particulate or gaseous matter which can be detected by the human eye. The radiant energy from an open flame shall not be considered a visible emission under this definition.

Volatile organic compound - Any compound of carbon or mixture of carbon compounds excluding methane, ethane, 1,1,1-trichloroethane (methyl chloroform), methylene chloride (dichloromethane), perchloroethylene (tetrachloroethylene), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (HCFC-22), trifluoromethane (HFC-23), 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113), 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123), 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124), pentafluoroethane (HFC-125), 1,1,2,2-tetrafluoroethane (HFC-134), 1,1,1,2-tetrafluoroethane (HFC-134a), 1,1-dichloro-1-fluoroethane (HCFC-141b), 1-chloro-1,1-difluoroethane (HCFC-142b), 1,1,1-trifluoroethane (HFC-143a), 1,1-difluoroethane (HFC-152a), parachlorobenzotrifluoride (PCBTF), cyclic, branched, or linear completely methylated siloxanes, acetone, 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca), 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb), 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee), carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and perfluorocarbon compounds which fall into these classes:

(A) cyclic, branched, or linear, completely fluorinated alkanes;

(B) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

VOC water separator - Any tank, box, sump, or other container in which any VOC, floating on or contained in water entering such tank, box, sump, or other container, is physically separated and removed from water prior to outfall, drainage, or recovery of such water.

Wash coat (used in wood parts and products coating) - A low-solids clear liquid applied over semitransparent stains and toners to protect the color coats and to set the fibers for subsequent sanding or to separate spray stains from wiping stains to enhance color depth.

Waxy, high pour point crude oil - A crude oil with a pour point of 50°F (10°C) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

TABLE I.
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical
20	Acetal
30	Acetaldehyde
40	Acetaldol
50	Acetamide
65	Acetanilide
70	Acetic acid
80	Acetic anhydride
90	Acetone
100	Acetone cyanohydrin
110	Acetonitrile
120	Acetophenone
125	Acetyl chloride
130	Acetylene
140	Acrolein
150	Acrylamide
160	Acrylic acid and esters
170	Acrylonitrile
180	Adipic acid
185	Adiponitrile
190	Alkyl naphthalenes
200	Allyl alcohol
210	Allyl chloride
220	Aminobenzoic acid
230	Aminoethylethanolamine
235	p-Aminophenol
240	Amyl acetates
250	Amyl alcohols
260	Amyl amine
270	Amyl chloride
280	Amyl mercaptans
290	Amyl phenol
300	Aniline

OCPDB No.*	Chemical
310	Aniline hydrochloride
320	Anisidine
330	Anisole
340	Anthranilic acid
350	Anthraquinone
360	Benzaldehyde
370	Benzamide
380	Benzene
390	Benzenedisulfonic acid
400	Benzenesulfonic acid
410	Benzil
420	Benzilic acid
430	Benzoic acid
440	Benzoin
450	Benzonitrile
460	Benzophenone
480	Benzotrichloride
490	Benzoyl chloride
500	Benzyl alcohol
510	Benzyl amine
520	Benzyl benzoate
530	Benzyl chloride
540	Benzyl dichloride
550	Biphenyl
560	Bisphenol A
570	Bromobenzene
580	Bromonaphthalene
590	Butadiene
592	1-butene
600	n-butyl acetate
630	n-butyl acrylate
640	n-butyl alcohol
650	s-butyl alcohol
660	t-butyl alcohol
670	n-butylamine

OCPDB No.*	Chemical
680	s-butylamine
690	t-butylamine
700	p-tert-butyl benzoic acid
710	1,3-butylene glycol
750	n-butyraldehyde
760	Butyric acid
770	Butyric anhydride
780	Butyronitrile
785	Caprolactam
790	Carbon disulfide
800	Carbon tetrabromide
810	Carbon tetrachloride
820	Cellulose acetate
840	Chloroacetic acid
850	m-chloroaniline
860	o-chloroaniline
870	p-chloroaniline
880	Chlorobenzaldehyde
890	Chlorobenzene
900	Chlorobenzoic acid
905	Chlorobenzotrichloride
910	Chlorobenzoyl chloride
920	Chlorodifluoroethane
921	Chlorodifluoromethane
930	Chloroform
940	Chloronapthalene
950	o-chloronitrobenzene
951	p-chloronitrobenzene
960	Chlorophenols
964	Chloroprene
965	Chlorosulfonic acid
970	m-chlorotoluene
980	o-chlorotoluene
990	p-chlorotoluene
992	Chlorotrifluoromethane

OCPDB No.*	Chemical
1000	m-cresol
1010	o-cresol
1020	p-cresol
1021	Mixed cresols
1030	Cresylic acid
1040	Crotonaldehyde
1050	Crotonic acid
1060	Cumene
1070	Cumene hydroperoxide
1080	Cyanoacetic acid
1090	Cyanogen chloride
1100	Cyanuric acid
1110	Cyanuric chloride
1120	Cyclohexane
1130	Cyclohexanol
1140	Cyclohexanone
1150	Cyclohexene
1160	Cyclohexylamine
1170	Cyclooctadiene
1180	Decanol
1190	Diacetone alcohol
1200	Diaminobenzoic acid
1210	Dichloroaniline
1215	m-dichlorobenzene
1216	o-dichlorobenzene
1220	p-dichlorobenzene
1221	Dichlorodifluoromethane
1240	Dichloroethyl ether
1244	1,2-dichloroethane (EDC)
1250	Dichlorohydrin
1270	Dichloropropene
1280	Dicyclohexylamine
1290	Diethylamine
1300	Diethylene glycol
1304	Diethylene glycol diethyl ether

OCPDB No.*	Chemical
1305	Diethylene glycol dimethyl ether
1310	Diethylene glycol monobutyl ether
1320	Diethylene glycol monobutyl ether acetate
1330	Diethylene glycol monoethyl ether
1340	Diethylene glycol monoethyl ether acetate
1360	Diethylene glycol monomethyl ether
1420	Diethyl sulfate
1430	Difluoroethane
1440	Diisobutylene
1442	Diisodecyl phthalate
1444	Diisooctyl phthalate
1450	Dikethene
1460	Dimethylamine
1470	N,N-dimethylaniline
1480	N,N-dimethyl ether
1490	N,N-dimethylformamide
1495	Dimethylhydrazine
1500	Dimethyl sulfate
1510	Dimethyl sulfide
1520	Dimethyl sulfoxide
1530	Dimethyl terephthalate
1540	3,5-dinitrobenzoic acid
1545	Dinitrophenol
1550	Dinitrotoluene
1560	Dioxane
1570	Dioxolane
1580	Diphenylamine
1590	Diphenyl oxide
1600	Diphenyl thiourea
1610	Dipropylene glycol
1620	Dodecene
1630	Dodecylaniline
1640	Dodecylphenol
1650	Epichlorohydrin
1660	Ethanol

OCPDB No.*	Chemical
1661	Ethanolamines
1670	Ethyl acetate
1680	Ethyl acetoacetate
1690	Ethyl acrylate
1700	Ethylamine
1710	Ethylbenzene
1720	Ethyl bromide
1730	Ethylcellulose
1740	Ethyl chloride
1750	Ethyl chloroacetate
1760	Ethylcyanoacetate
1770	Ethylene
1780	Ethylene carbonate
1790	Ethylene chlorohydrin
1800	Ethylenediamine
1810	Ethylene dibromide
1830	Ethylene glycol
1840	Ethylene glycol diacetate
1870	Ethylene glycol dimethyl ether
1890	Ethylene glycol monobutyl ether
1900	Ethylene glycol monobutyl ether acetate
1910	Ethylene glycol monoethyl ether
1920	Ethylene glycol monoethyl ether acetate
1930	Ethylene glycol monomethyl ether
1940	Ethylene glycol monomethyl ether acetate
1960	Ethylene glycol monophenyl ether
1970	Ethylene glycol monopropyl ether
1980	Ethylene oxide
1990	Ethyl ether
2000	2-ethylhexanol
2010	Ethyl orthoformate
2020	Ethyl oxalate
2030	Ethyl sodium oxalacetate
2040	Formaldehyde
2050	Formamide

OCPDB No.*	Chemical
2060	Formic acid
2070	Fumaric acid
2073	Furfural
2090	Glycerol (Synthetic)
2091	Glycerol dichlorohydrin
2100	Glycerol triether
2110	Glycine
2120	Glyoxal
2145	Hexachlorobenzene
2150	Hexachloroethane
2160	Hexadecyl alcohol
2165	Hexamethylenediamine
2170	Hexamethylene glycol
2180	Hexamethylenetetramine
2190	Hydrogen cyanide
2200	Hydroquinone
2210	p-hydroxybenzoic acid
2240	Isoamylene
2250	Isobutanol
2260	Isobutyl acetate
2261	Isobutylene
2270	Isobutyraldehyde
2280	Isobutyric acid
2300	Isodecanol
2320	Isooctyl alcohol
2321	Isopentane
2330	Isophorone
2340	Isophthalic acid
2350	Isoprene
2360	Isopropanol
2370	Isopropyl acetate
2380	Isopropylamine
2390	Isopropyl chloride
2400	Isopropylphenol
2410	Ketene

OCPDB No.*	Chemical
2414	Linear alkyl sulfonate
2417	Linear alkylbenzene
2420	Maleic acid
2430	Maleic anhydride
2440	Malic acid
2450	Mesityl oxide
2455	Metanilic acid
2460	Methacrylic acid
2490	Methallyl chloride
2500	Methanol
2510	Methyl acetate
2520	Methyl acetoacetate
2530	Methylamine
2540	n-methylaniline
2545	Methyl bromide
2550	Methyl butynol
2560	Methyl chloride
2570	Methyl cyclohexane
2590	Methyl cyclohexanone
2620	Methylene chloride
2630	Methylene dianiline
2635	Methylene diphenyl diisocyanate
2640	Methyl ethyl ketone
2645	Methyl formate
2650	Methyl isobutyl carbinol
2660	Methyl isobutyl ketone
2665	Methyl methacrylate
2670	Methyl pentynol
2690	a-methylstyrene
2700	Morpholine
2710	a-naphthalene sulfonic acid
2720	B-naphthalene sulfonic acid
2730	a-naphthol
2740	B-naphthol
2750	Neopentanoic acid

OCPDB No.*	Chemical
2756	o-nitroaniline
2757	p-nitroaniline
2760	o-nitroanisole
2762	p-nitroanisole
2770	Nitrobenzene
2780	Nitrobenzoic acid (o, m, and p)
2790	Nitroethane
2791	Nitromethane
2792	Nitrophenol
2795	Nitropropane
2800	Nitrotoluene
2810	Nonene
2820	Nonyl phenol
2830	Octyl phenol
2840	Paraldehyde
2850	Pentaerythritol
2851	n-pentane
2855	l-pentene
2860	Perchloroethylene
2882	Perchloromethyl mercaptan
2890	O-phenetidine
2900	p-phenetidine
2910	Phenol
2920	Phenolsulfonic acids
2930	Phenyl anthranilic acid
2940	Phenylenediamine
2950	Phosgene
2960	Phthalic anhydride
2970	Phthalimide
2973	B-picoline
2976	Piperazine
3000	Polybutenes
3010	Polyethylene glycol
3025	Polypropylene glycol
3063	Propionaldehyde

OCPDB No.*	Chemical
3066	Propionic acid
3070	n-propyl alcohol
3075	Propylamine
3080	Propyl chloride
3090	Propylene
3100	Propylene chlorohydrin
3110	Propylene dichloride
3111	Propylene glycol
3120	Propylene oxide
3130	Pyridine
3140	Quinone
3150	Resorcinol
3160	Resorcylic acid
3170	Salicylic acid
3180	Sodium acetate
3181	Sodium benzoate
3190	Sodium carboxymethyl cellulose
3191	Sodium chloracetate
3200	Sodium formate
3210	Sodium phenate
3220	Sorbic acid
3230	Styrene
3240	Succinic acid
3250	Succinonitrile
3251	Sulfanilic acid
3260	Sulfolane
3270	Tannic acid
3280	Terephthalic acid
3290 and 3291	Tetrachloroethanes
3300	Tetrachlorophthalic anhydride
3310	Tetraethyllead
3320	Tetrahydronaphthalene
3330	Tetrahydrophthalic anhydride

OCPDB No.*	Chemical
3335	Tetramethyllead
3340	Tetramethylenediamine
3341	Tetramethylethylenediamine
3349	Toluene
3350	Toluene-2,4-diamine
3354	Toluene-2,4-diisocyanate
3355	Toluene diisocyanates (mixture)
3360	Toluene sulfonamide
3370	Toluene sulfonic acids
3380	Toluene sulfonyl chloride
3381	Toluidines
3390, 3391, and 3393	Trichlorobenzenes
3395	1,1,1-trichloroethane
3400	1,1,2-trichloroethane
3410	Trichloroethylene
3411	Trichlorofluoromethane
3420	1,2,3-trichloropropane
3430	1,1,2-trichloro-1,2,2-trifluoroethane
3450	Triethylamine
3460	Triethylene glycol
3470	Triethylene glycol dimethyl ether
3480	Triisobutylene
3490	Trimethylamine
3500	Urea
3510	Vinyl acetate
3520	Vinyl chloride
3530	Vinylidene chloride
3540	Vinyl toluene
3541	Xylenes (mixed)
3560	o-xylene
3570	p-xylene

OCPDB No.*	Chemical
3580	Xylenol
3590	Xylidine

*The OCPDB Numbers are reference in indices assigned to the various chemicals in the Organic Chemicals Producers Data Base developed by EPA.

§101.2. Multiple Air Contaminant Sources or Properties.

(a) In an area where an additive effect occurs from the accumulation of air contaminants from two or more sources on a single property or from two or more properties, such that the level of air contaminants exceeds the ambient air quality standards established by the Texas Natural Resource Conservation Commission (TNRCC or commission), and each source or each property is emitting no more than the allowed limit for an air contaminant for a single source or from a single property, further reduction of emissions from each source or property shall be made as determined by the Commission.

(b) Two or more property owners/operators may petition the commission to have their properties designated a single property for purposes of demonstrating compliance with TNRCC regulations and the control of air emissions. The petition shall be subject to the following criteria.

(1) The properties must be contiguous except for intervening roads, railroads, and/or rights-of-way, which are a part of the property. Properties separated by a public right-of-way will not be considered contiguous.

(2) The use of this section is intended for a property under the control of a single entity that has been or will be divided and placed under the control of separate entities, creating a new property line configuration or for properties operated or intended to be operated as an integrated plant or plants where individual facilities are owned by separate entities, but all facilities are under the control of a single entity.

(3) The petition shall describe generally the manner in which the control of emissions and demonstration of compliance with TNRCC regulations will be administered and controlled. The petition shall name the party or parties accepting responsibility for off-property impacts. The petition shall be accompanied by a copy of an executed written agreement between the property holders who consent to having their properties so designated and shall also be accompanied by a United States Geological Survey map or equivalent indicating geographical features such as roads, watercourses, and prominent landmarks, the boundaries of the petitioners' properties, the area to be included in the single property designation, and present land uses in the areas surrounding the area to be included. The written agreement must detail the mechanisms of control exercised on both properties. The commission may place such conditions on the approval of the petition as it may deem appropriate to avoid a condition of air pollution or ensure compliance with state and federal regulations.

Adopted December 13, 1995 Effective January 8, 1996

§101.3. Circumvention.

No person shall use any plan, activity, device or contrivance which the executive director determines will, without resulting in an actual reduction of air contaminants, conceal or appear to minimize the effects of an emission which would otherwise constitute a violation of the Act or regulations. Air introduced for dilution purposes only is considered a circumvention of the regulations.

Adopted March 30, 1979 Effective May 6, 1979

§101.4. Nuisance.

No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

Adopted March 30, 1979 Effective May 6, 1979

§101.5. Traffic Hazard.

No person shall discharge from any source whatsoever such quantities of air contaminants, uncombined water, or other materials which cause or have a tendency to cause a traffic hazard or an interference with normal road use.

Adopted March 30, 1979 Effective May 6, 1979

§101.6. Notification Requirements for Major Upset.

(a) The owner or operator of a facility shall notify the executive director and the appropriate local air pollution control agencies as soon as possible of any major upset condition which causes or may cause an excessive emission that contravenes the intent of the Act or the regulations of the Texas Natural Resource Conservation Commission. A list of persons to contact may be obtained from the executive director upon request. The notification shall identify the cause of the upset and the processes and equipment involved, and shall include the date and time of the upset, the duration of the upset, and the compound-specific types and quantities of emissions released during the upset. In the event that this information is not known at the time of the initial notification, such information or a best estimate shall be provided as soon as possible, but not later than two weeks after the onset of the upset condition.

(b) The owner or operator of any source subject to the provisions of this section shall perform, upon request by the executive director, a technical evaluation of the upset event. The evaluation shall include at least an analysis of the probable causes of the upset and any necessary actions to prevent or minimize recurrence. The evaluation shall be submitted in writing to the executive director within 60 days from the date of request. The 60-day period may be extended by the executive director.

(c) The owner or operator of a source may not allow the emissions produced during an upset to create a nuisance condition in violation of §101.4 of this title (relating to Nuisance).

Adopted March 8, 1991 Effective April 19, 1991

§101.7. Notification Requirements for Maintenance.

(a) All pollution emission capture equipment and abatement equipment shall be maintained in good working order and operated properly during normal facility operations. Emission capture and abatement equipment shall be considered in good working order and operated properly when operated in a manner such that the facility is capable of operating within limitations established by permit and/or Texas Natural Resource Conservation Commission (TNRCC or Commission) regulations. Normal facility operations include any operation other than start-up or shutdown.

(b) The owner or operator of a source shall notify the executive director and the appropriate local air pollution control agencies in writing at least ten days prior to any planned maintenance, start-up, or shutdown which will or may cause an excessive emission that contravenes the intent of the Act or the regulations of the Commission. If ten days' notice can not be given for unplanned maintenance, notification by telephone shall be given as soon as practicable prior to shutdown and shall be confirmed in writing as soon as possible after the onset of shutdown. The notification, for either case, shall identify the processes and the equipment and shall include the date and time of the maintenance, the duration of the maintenance period, and the compound-specific types and quantities of emissions expected to be released during the maintenance activities.

(c) The owner or operator of any source subject to the provisions of this section, upon request by the executive director, shall submit a technical plan for the maintenance activities prior to a reasonable deadline to be determined by the executive director. The plan shall contain a detailed explanation of the means by which emissions will be minimized during shutdown, maintenance, and start-up. Also, for those emissions which must be released into the atmosphere, the plan shall include the reasons such emissions can not be reduced further.

(d) The owner or operator of a source may not allow the emissions produced during shutdown, maintenance, or start-up to create a nuisance condition in violation of §101.4 of this title (relating to Nuisance).

Adopted March 8, 1991 Effective April 19, 1991

§101.8. Sampling.

(a) Any person owning or operating a source which emits air contaminants into the air of this state shall, upon request by the Texas Natural Resource Conservation Commission (TNRCC or Commission) or the executive director, conduct sampling to determine the opacity, rate, composition, and/or concentration of such emissions. Sampling shall be conducted at a frequency and within a period of time which are reasonable as specified by the Commission or executive director. The sampling method shall be specified by the Commission or executive director and, further, the sampling shall be conducted so as to reflect with reasonable accuracy the above listed characteristics of such emissions.

(b) Any person affected by subsection (a) of this section may request the executive director to approve alternate sampling techniques or other means to determine the opacity, rate, composition, and/or concentration of emissions. The executive director may approve such alternate methods or means if it can be

demonstrated that such alternatives will be substantially equivalent to the sampling methods specified by the executive director or the Commission.

(c) If requested to obtain air contaminants emission data pursuant to subsection (a) of this section, the owner or operator shall attest to and report the results so obtained to the executive director within a reasonable time specified by and on forms furnished by the executive director.

(d) Copies of all data, the computations, and results obtained under subsection (a) of this section shall be retained by the owner or operator of a source for at least five years and shall be made available to the Commission, or any members, employees or agents thereof, and to any local air pollution control agencies, during regular business hours.

Adopted March 30, 1979 Effective May 6, 1979

§101.9. Sampling Ports.

Any person, at the request of the Texas Natural Resource Conservation Commission (TNRCC or Commission), shall provide in connection with each flue a power source near the point of testing in addition to such sampling and testing facilities and sampling ports, including safe and easy access thereto, exclusive of instruments and sensing devices, as may be necessary for the Commission to determine the nature and quality of emissions which are or may be discharged as a result of source operations. Evidence and data based on these samples and calculations may be used to substantiate violations of the Act, rules, and regulations. Agents of the Commission shall be permitted to sample the stacks during operating hours.

Adopted March 30, 1979 Effective May 6, 1979

§101.10. Emissions Inventory Requirements.

(a) Applicability. The owner or operator of the following stationary sources in the State of Texas or on waters that extend 25 miles from the shoreline shall submit emissions inventories to the Texas Natural Resource Conservation Commission (TNRCC) on forms or other media approved by the TNRCC:

(1) A major facility/stationary source, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), and any stationary source in an ozone nonattainment area emitting a minimum of 10 tons per year (TPY) volatile organic compounds (VOC), 25 TPY nitrogen oxides (NO_x), or 100 TPY carbon monoxide (CO).

(2) Any stationary source in an attainment area or unclassified area that emits 100 TPY or more of any contaminant (including VOC) for which a national ambient air quality standard has been issued.

(3) Any major source of hazardous air pollutants as defined in the Federal Clean Air Act (FCAA), §112(a)(1).

(b) Types of inventories.

(1) Initial emissions inventory. Stationary sources, as identified in subsection (a) of this section, shall submit an initial emissions inventory (IEI) for any criteria pollutant or hazardous air pollutant that has not been identified in a previous inventory. The IEI shall consist of actual emissions of VOC, NO_x, CO, sulfur dioxide (SO_2), lead (Pb), and particulate matter of less than 10 microns in diameter (PM_{10}) from stationary sources and emissions of all hazardous air pollutants identified in §112(b) of the FCAA. For purposes of this section, the term "actual emission" is the actual rate of emissions of a pollutant from an emissions unit for the calendar year or seasonal period. Actual emission estimates must also include excess emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime to parallel the documentation of these events in the emissions inventory and must follow emission calculations as identified in subsection (c) of this section. Where there is an enforceable document, such as a permit or board order establishing allowable levels, the IEI shall include the allowable emission level as identified in the permit maximum allowable emission rate table or board order.

(2) Statewide annual emissions inventory update. Sources as identified in subsection (a) of this section that have submitted an IEI shall submit an annual emissions inventory update (AEIU) which consists of actual and allowable emissions as identified in subsection (a)(1) of this section, if any of the following criteria are met. If none of the following criteria are met, a letter certifying such shall be submitted instead.

(A) Any source that achieves compliance with any regulation of the State Implementation Plan at any time within the inventory reporting period.

(B) Any change in operating conditions, including start-ups, shut-downs, or process changes at the source that results in a 5.0% or greater increase or reduction in total annual emissions of VOC, NO_x, CO, SO_2, Pb, or PM_{10} from the most recently submitted emissions data.

(C) A cessation of all production processes and termination of operations at the source.

(3) Ozone nonattainment area inventory. Stationary sources emitting a minimum of 10 TPY of VOC, 25 TPY of NO_x, or 100 TPY of CO shall submit an annual inventory. The inventory shall consist of annual emissions and typical weekday emissions that occur during the summer months.

(4) CO nonattainment area inventory. Stationary sources emitting 100 TPY or more of CO shall submit an inventory every three years. The inventory shall consist of annual emissions and typical weekday emissions that occur during the winter months. The first inventory is required for the 1989-1990 winter season.

(5) Special inventories. Upon request by the executive director or a designated representative of the TNRCC, any person affected by any rule or regulation of the TNRCC shall file additional emissions data with the TNRCC.

(c) Calculations. Actual measurement with continuous emissions monitoring systems (CEMS) is the preferred method of calculating emissions from a source. Other means for determining actual emissions may be utilized if CEMS data is not available in accordance with detailed instructions of the Emissions Inventory Division of the TNRCC.

(d) Certifying statement. A certifying statement, required by the FCAA, §182(a)(3)(B), is to be signed by the owner(s) or operator(s) and shall accompany each emissions inventory to attest that the information contained in the inventory is true and accurate to the best knowledge of the certifying official.

(e) Reporting requirements. The IEI or initial AEIU and the 1992 ozone nonattainment area inventory shall be submitted to the TNRCC no later than March 31, 1993. Subsequent AEIUs and ozone nonattainment area inventories shall contain emissions data from the previous calendar year and shall be due on March 31 of each year. The 1992-1993 CO nonattainment area inventory shall be submitted no later than June 30, 1993 and every three years thereafter.

(f) Enforcement. Failure to submit emissions inventory data as required in this section shall result in formal enforcement action under the TCAA, §382.082 and §382.088. In addition, the TCAA, §361.2225, provides for criminal penalties for failure to comply with this section.

Adopted January 4, 1995 Effective January 27, 1995

§101.11. Exemptions from Rules and Regulations.

(a) Emissions occurring during major upsets may not be required to meet the allowable emission levels set by the rules and regulations upon proper notification as set forth in §101.6 of this title (relating to Notification Requirements for Major Upset), if a determination is made by the executive director after consultation with appropriate local agencies and with appropriate officials of the subject source that the upset conditions were unavoidable and that a shutdown or other corrective actions were taken as soon as practicable.

(b) Emissions occurring during start-up or shutdown of processes or during periods of maintenance may not be required to meet the allowable emission levels set by the rules and regulations if so determined by the executive director upon proper notification as set forth in §101.7 of this title (relating to Notification Requirements for Maintenance). The executive director may specify the amount, time, and duration of emissions that will be allowed during start-up and shutdown and during periods of maintenance.

(c) Smoke generators and other devices used for training inspectors in the evaluation of visible emissions at a training school approved by the Commission are not required to meet the allow able emission levels set by the rules and regulations, but must be located and operated such that a nuisance is not created at any time.

(d) Equipment, machines, devices, flues, and/or contrivances built or installed to be used at a domestic residence for domestic use are not required to meet the allowable emission levels set by the rules and regulations unless specifically required by a particular regulation.

(e) Sources emitting air contaminants which can not be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules and regulations when so determined and ordered by the Texas Natural Resource Conservation Commission. The Commission may specify limitations and conditions as to the operation of such exempt sources.

(f) No nuisance conditions shall be permitted to occur under these exemptions.

Adopted March 30, 1979 Effective May 6, 1979

§101.12. Temporary Exemptions During Drought Conditions.

Owners and operators of sources located in an area or region which has been classified by the National Weather Service as being in a severe or extreme drought condition under the Palmer Drought Severity Index for at least 30 days that are required to control emissions through the application or use of water may request a temporary exemption from any commission air quality rule, permit condition, permit representation, standard exemption condition, or commission order. This section does not allow for an exemption from any federal requirement.

(1) The request must be submitted in writing to the Office of Air Quality, New Source Review Division, and include at a minimum the following information:

(A) the site-specific circumstances that prevent the continued or limited use of water;

(B) the specific rule, permit condition, permit representation, standard exemption condition, or commission order from which an exemption is being requested; and

(C) the reasonably available alternative control measures which will be undertaken to minimize emissions.

(2) The executive director may authorize by written permission a temporary exemption of up to 120 days upon finding that:

(A) the source or facility is located in an area or region which has been classified as severe or extreme for at least 30 days under the Palmer Drought Severity Index;

(B) such an exemption is necessary to aid in the conservation of the area's water resources;

(C) any additional emissions which may result from the exemption will not cause a significant health concern in the opinion of the executive director; and

(D) the requesting owner and operator of the source will utilize reasonably available alternative control measures to minimize emissions during this time.

(3) The executive director may specify alternative procedures or methods for controlling emissions when an exemption is granted under this section.

(4) The executive director may issue one 60-day extension of an exemption authorized under this section. A commission order is required for any exemption which would extend beyond a total of 180 days and approval shall be based on the criteria contained in this section. The executive director shall

notify EPA of exemptions which will be considered for extension beyond 180 days. The executive director shall notify EPA at least 30 days prior to the commission's consideration of such an extension.

Adopted April 16, 1997 Effective May 8, 1997

§101.13. Use and Effect of Rules.

These rules may be used by the Texas Natural Resource Conservation Commission (TNRCC or Commission) as guides in the exercise of discretion, where discretion is vested. They shall not be construed as a limitation or restriction on the exercise of discretion, where it exists, nor shall they be construed to deprive the Commission of the exercise of any power, duties, and jurisdiction conferred by law, or to limit or restrict the amount and character of data or information which may be required for the proper administration of the law.

Adopted March 30, 1979 Effective May 6, 1979

§101.14. Sampling Procedures and Terminology.

Where not otherwise specified in the rules, regulations, determinations, and orders of the Texas Natural Resource Conservation Commission, the procedures used for sampling air and measuring air contaminants, and the methods of expressing the findings shall be those commonly accepted and used in the field of air pollution control.

Adopted March 30, 1979 Effective May 6, 1979

§101.15. Petition for Variance.

Any person seeking a variance, amendment of a variance, or extension of a variance issued to that person shall file a petition on a form prepared by the Texas Natural Resource Conservation Commission (TNRCC or Commission). The form shall be furnished by the Commission without charge upon request. In order to obtain a variance past the date by which compliance is to be achieved, a person must have demonstrated continuous and substantial progress toward compliance before the date of petition.

Adopted March 30, 1979 Effective May 6, 1979

§101.16. Effect of Acceptance of Variance or Permit.

Acceptance of a variance or a permit constitutes an acknowledgement and agreement that the holder thereof will comply with its terms and with the rules, regulations, and orders of the Texas Natural Resource Conservation Commission adopted pursuant to the Act.

Adopted March 30, 1979 Effective May 6, 1979

§101.17. Transfers.

A variance or a permit is granted in person, and does not attach to the realty to which it relates. A variance can not be transferred without prior notification to the Texas Natural Resource Conservation Commission (TNRCC or Commission). If a transfer of ownership of a source covered by a variance is contemplated by the holder of the variance, and the source and characteristics of the emissions will remain unchanged, upon notification, the executive director shall issue an endorsement to the variance reflecting the name of the new owner. Continuation of emissions by the new owner without prior notification to the Commission makes the variance subject to forfeiture.

Adopted March 30, 1979 Effective May 6, 1979

§101.18. Remedies Cumulative.

The administrative and judicial procedures available to the Texas Natural Resource Conservation Commission (TNRCC or Commission) to prevent, correct, or remedy air pollution conditions or violations are cumulative. Within the limits of the authority set forth in the Act and these rules, the Commission or the executive director may act under any one or more of these procedures, as applicable to the facts of a particular air pollution condition or claimed violation.

Adopted March 30, 1979 Effective May 6, 1979

§101.19. Severability.

If any provisions of any of the regulations of the Texas Natural Resource Conservation Commission (TNRCC or Commission) or the application of that provision to any person, situation, or circumstance is for any reason adjudged invalid, the adjudication does not affect any other provision of the regulations or the application of the adjudicated provision to any other person, situation, or circumstance. The Commission declares that it would have adopted the valid portions and applications of the regulations without the invalid part and to this end the provisions of the regulations are declared to be severable.

Adopted March 30, 1979 Effective May 6, 1979

§101.20. Compliance with Environmental Protection Agency Standards.

Any person owning or operating a source of air contaminants shall comply with the following requirements:

(1) Any applicable new source performance standards promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Federal Clean Air Act, §111, as amended;

(2) Any applicable emissions standards for hazardous air pollutants promulgated by the EPA pursuant to the FCAA, §112, as amended; and

(3) The conditions of any permit issued by the EPA pursuant to 40 Code of Federal Regulations §52.21, concerning the Prevention of Significant Deterioration of Air Quality.

Adopted July 26, 1985 Effective August 23, 1985

§101.21. The National Primary and Secondary Ambient Air Quality Standards.

The National Primary and Secondary Ambient Air Quality Standards, as promulgated pursuant to Section 109 of the Federal Clean Air Act, as amended, will be enforced throughout all parts of Texas.

Adopted March 30, 1979 Effective May 6, 1979

§101.22. Effective Date.

The general rules contained in this chapter shall be in force immediately and shall supersede all previous general rules of the Texas Natural Resource Conservation Commission.

Adopted March 20, 1981 Effective April 16, 1981

§101.23. Alternate Emission Reduction ("Bubble") Policy.

An owner or operator of any facility that is affected by any control requirement of Texas Natural Resource Conservation Commission (TNRCC) Regulations I, II, III, V, VII, and IX adopted on or after March 30, 1979, may, prior to compliance with such requirement, request the executive director to approve control of emissions from an alternate facility or from alternate facilities located on the affected property and owned or operated by or under the control of the owner or operator of the affected facility in lieu of compliance with the requirement as prescribed in the regulation, provided the alternate proposed controls are not required by any TNRCC rule, regulation, permit condition, board order, or court order. The executive director shall approve control of emissions from alternate facilities if the applicant demonstrates that the alternate controls will yield, by the date specified in the rule, emission reductions that are substantially equivalent to the emissions reductions which would otherwise be required in terms of their quantity, character, air quality impacts including health and welfare effects, and area affected. Facilities which receive the executive director's approval of an alternate emissions control plan will be deemed to have complied with the otherwise applicable TNRCC rule. However, the executive director may, after notice and opportunity for public hearing, revoke the credit or authority for alternate controls if he determines that any of the prerequisites for approval of the alternate controls are no longer met or if further emission reductions are needed to meet the intent of the Texas Clean Air Act.

Adopted February 13, 1981 Effective March 13, 1981

§101.24. Inspection Fees.

(a) Applicability. The owner or operator of each account to which this rule applies, as defined in this subsection, shall remit to the Texas Natural Resource Conservation Commission (TNRCC) an inspection fee each fiscal year. A fiscal year is defined as the period from September 1 through August 31. A fiscal year, having the same number as the next calendar year, begins on the September 1 prior to that calendar year. An account subject to both an inspection fee and an emissions fee, pursuant to §101.27 of this title (relating to Emissions Fees), is required to pay only the greater of the two fees. For purposes of this section, an account shall be defined as all of the facilities located at a property, including those that are permitted,

non-permitted, exempted, and grandfathered. Properties under common ownership, but containing separate operations, or managed independently, or carried on the records of this agency under separate account numbers, will be charged a separate fee for each such account, even if the properties are contiguous or are contiguous except for intervening roads, railroads, rights-of-way, waterways, and the like. The inspection fee shall apply to each account which contains one or more of the types of plants, facilities, and/or processes described in subsection (d) of this section. References for the industrial categories used are provided in the *Standard Industrial Classification (SIC) Manual* (Executive Office of the President, Office of Management and Budget, 1987). If more than one SIC category can apply to an account, the fee assessed shall be the highest fee listed for the applicable classifications in the fee schedule. Provisions of the section apply to all accounts, including accounts which have not been assigned specific TNRCC Office of Air Quality (OAQ) account numbers. The owner or operator of an account subject to an inspection fee requirement is responsible for contacting the appropriate TNRCC regional office to obtain an account number. The OAQ will not initiate the combination or separation of accounts solely for fee assessment purposes. If an account is operated at any time during the fiscal year for which the fee is assessed, a full inspection fee is due. If OAQ is notified in writing that the plant is not and will not be in operation during that fiscal year, a fee will not be due.

(b) Payment. Fees shall be remitted by check or money order made payable to the TNRCC and sent to the TNRCC address printed on the fee return form. A completed fee return form shall accompany fees remitted. The fee return form shall include, at least, the company name, mailing address, site name, OAQ account number, the SIC category on which the fee was determined, and the name and telephone number of the person to contact in case questions arise regarding the fee payment.

(c) Due date. Fee payments shall be made annually and must be received by the TNRCC or postmarked no later than November 1 of the fiscal year in which the fee is assessed. If an account commences or resumes operation after November 1 of the fiscal year in which the fee is assessed, the full inspection fee will be due prior to commencement or resumption of operations.

(d) Inspection fee schedule. The inspection fee schedule is as follows.

SIC CODE - DESCRIPTION **FEE**

1311, 1321 - Natural Gas Processing

Gas processing and treatment operations with a rated inlet capacity or highest average daily inlet volume for one of the last three years of at least 5 million standard cubic feet per day (scf/day), but less than 25 million scf/day

1311 - Natural Gas Sweetening . . . . . $ 1,250.00

1321 - Natural Gas Liquids Processing . . . . . $ 2,875.00

Gas processing and treatment operations with a rated inlet capacity or highest average daily inlet volume for one of the last three years of at least 25 million scf/day

1311 - Natural Gas Sweetening . . . . . $ 2,500.00

1321 - Natural Gas Liquids Processing . . . . . $ 5,750.00

Compression with total horsepower (HP) of at least 10,000 HP from fossil fuel-fired engines . . . . . $ 2,875.00

1459 - Fuller's Earth Processing

Material processing capacity of at least 25 tons per hour . . . . . $ 5,625.00

1479 - Sulfur Mining

Material processing capacity of at least 1 ton per day, but less than 10 tons per day . . . . . $ 6,000.00

Material processing capacity of at least 10 tons per day . . . . . $ 12,000.00

2061 - Cane Sugar Manufacturing

Processing capacity of at least 1,000 pounds per hour . . . . . $ 6,875.00

2074 - Cottonseed Oil Mills

Processing capacity equal to or greater than 100 tons per day, but less than 425 tons per day . . . . . $ 1,250.00

Processing capacity equal to or greater than 425 tons per day, but less than 850 tons per day . . . . . $ 1,875.00

Processing capacity equal to or greater than 850 tons per day . . . . . $ 4,000.00

2082 - Malt Beverages

Capacity of at least 1 million barrels per year . . . . . $ 3,375.00

2435, 2436, 2493 - Veneer, Plywood, Particleboard and Fiberboard

Capacity equal to or greater than 50 million square feet per year (ft^2/year), but less than 125 million ft^2/year 3/8" basis . . . . . $ 2,185.00

Capacity equal to or greater than 125 million ft^2/year, but less than 350 million ft^2/year 3/8" basis . . . . . $ 4,375.00

Capacity equal to or greater than 350 million ft^2/year 3/8" basis . . . . . $ 8,750.00

2611, 2621 - Pulp and Paper Mills

Capacity of at least 100 pounds per hour, but less than 1,000 pounds per hour . . . . . $ 7,875.00

Capacity of at least 1,000 pounds per hour . . . . . $ 15,750.00

2812 - Alkalies and Chlorine

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year . . . . . $ 2,625.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 5,250.00

Capacity of at least 100 million pounds per year . . . . . $ 10,500.00

2813 - Industrial Gases

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year, and heat input capacity on-site of at least 250 million British thermal units (Btu) per hour . . . . . $ 1,875.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year, and heat input capacity on-site of at least 250 million Btu per hour . . . . . $ 3,750.00

Capacity of at least 100 million pounds per year, and heat input capacity on-site of at least 250 million Btu per hour . . . . . $ 7,500.00

2819 - Inorganic Chemicals

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year . . . . . $ 3,750.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 7,500.00

Capacity of at least 100 million pounds per year . . . . . $ 15,000.00

2821 - Plastics, Minerals and Resins

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year . . . . . $ 3,500.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 7,000.00

Capacity of at least 100 million pounds per year . . . . . $ 14,000.00

2822 - Synthetic Rubber

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year . . . . . $ 3,375.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 6,750.00

Capacity of at least 100 million pounds per year . . . . . $ 13,500.00

2834 - Pharmaceutical Preparations

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year . . . . . $ 1,685.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 3,375.00

Capacity of at least 100 million pounds per year . . . . . $ 6,750.00

2841 - Soap and Other Detergents

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year . . . . . $ 750.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 1,500.00

Capacity of at least 100 million pounds per year . . . . . $ 3,000.00

2861 - Gum and Wood Chemicals

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year . . . . . $ 2,310.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 4,625.00

Capacity of at least 100 million pounds per year . . . . . $ 9,250.00

2865 - Cyclic Crudes and Intermediates

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year . . . . . $ 3,625.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 7,250.00

Capacity of at least 100 million pounds per year . . . . . $ 14,500.00

2869 - Organic Chemicals

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year . . . . . $ 3,750.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 7,500.00

Capacity of at least 100 million pounds per year . . . . . $ 15,000.00

2873 - Nitrogenous Fertilizers

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year . . . . . $ 1,560.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 3,125.00

Capacity of at least 100 million pounds per year . . . . . $ 6,250.00

2874 - Phosphatic Fertilizers

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year . . . . . $ 2,560.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 5,125.00

Capacity of at least 100 million pounds per year . . . . . $ 10,250.00

2879 - Agricultural Chemicals

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year . . . . . $ 2,310.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 4,625.00

Capacity of at least 100 million pounds per year . . . . . $ 9,250.00

2895 - Carbon Black

Capacity of at least 6 million pounds per year, but less than 50 million pounds per year . . . . . $ 7,750.00

Capacity of at least 50 million pounds per year . . . . . $ 15,500.00

2899 - Chemical Preparations

Capacity of at least 1 million pounds per year, but less than 10 million pounds per year . . . . . $ l,000.00

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 2,000.00

Capacity of at least 100 million pounds per year . . . . . $ 4,000.00

2911 - Petroleum Refining

Capacity of at least 10,000 barrels per day (bbl/day), but less than 100,000 bbl/day . . . . . $ 9,375.00

Capacity of at least 100,000 bbl/day . . . . . $ 18,750.00

2951 - Asphalt Paving Mixtures . . . . . $ 875.00

2952 - Asphalt Felts and Coatings

Capacity of at least 1 million pounds per year, but less than 50 million pounds per year . . . . . $ 4,250.00

Capacity of at least 50 million pounds per year . . . . . $ 8,500.00

2992 - Waste Oil Re-Refining

Capacity of at least 200,000 gallons per year . . . . . $ 3,750.00

2999 - Petroleum and Coal Products

Capacity of at least 1 million pounds per year, but less than 50 million pounds per year . . . . . $ 5,125.00

Capacity of at least 50 million pounds per year . . . . . $ 10,250.00

3011 - Tires and Inner Tubes

Capacity of at least 5 million pounds per year, but less than 10 million pounds per year . . . . . $ 7,125.00

Capacity of at least 10 million pounds per year . . . . . $ 14,250.00

3211 - Flat Glass

Capacity of at least 10 million pounds per year, but less than 200 million pounds per year . . . . . $ 5,875.00

Capacity of at least 200 million pounds per year . . . . . $ 11,750.00

3221 - Glass Containers

Capacity of at least 10 million pounds per year, but less than 200 million pounds per year . . . . . $ 3,375.00

Capacity of at least 200 million pounds per year . . . . . $ 6,750.00

3229 - Pressed and Blown Glass

Capacity of at least 10 million pounds per year, but less than 200 million pounds per year . . . . . $ 6,750.00

Capacity of at least 200 million pounds per year . . . . . $ 13,500.00

3241 - Cement, Hydraulic

Capacity of at least 10 million pounds per year, but less than 500 million pounds per year . . . . . $ 7,250.00

Capacity of at least 500 million pounds per year . . . . . $ 14,500.00

3251 - Brick and Structural Clay Tile

Capacity of at least 10 million pounds per year, but less than 200 million pounds per year . . . . . $ 2,375.00

Capacity of at least 200 million pounds per year . . . . . $ 4,750.00

3259 - Structural Clay Products

Capacity of at least 10 million pounds per year, but less than 200 million pounds per year . . . . . $ 6,250.00

Capacity of at least 200 million pounds per year . . . . . $ 12,500.00

3261 - Vitreous Plumbing Fixtures

Capacity of at least 10 million pounds per year, but less than 200 million pounds per year . . . . . $ 3,375.00

Capacity of at least 200 million pounds per year . . . . . $ 6,750.00

3273 - Ready-Mixed Concrete

Capacity to produce for delivery at least 10 cubic yards (yd^3) per hour (20,000 yd^3 per year) . . . . . $ 625.00

3274 - Lime

Capacity of at least 1 million pounds per year, but less than 50 million pounds per year . . . . . $ 7,375.00

Capacity of at least 50 million pounds per year . . . . . $ 14,750.00

3275 - Gypsum Products

Capacity of at least 10 million pounds per year, but less than 200 million pounds per year . . . . . $ 3,875.00

Capacity of at least 200 million pounds per year . . . . . $ 7,750.00

3292 - Asbestos Products

Capacity of at least 10 million pounds per year, but less than 200 million pounds per year . . . . . $ 1,250.00

Capacity of at least 200 million pounds per year . . . . . $ 2,500.00

3295 - Minerals, Ground or Treated

Capacity of at least 1 million pounds per year, but less than 50 million pounds per year . . . . . $ 3,375.00

Capacity of at least 50 million pounds per year . . . . . $ 6,750.00

3296 - Mineral Wool

Capacity of at least 10,000 pounds per year, but less than 1 million pounds per year . . . . . $ 7,375.00

Capacity of at least 1 million pounds per year . . . . . $ 14,750.00

3312 - Blast Furnaces and Steel Mills

Capacity of at least 50 million pounds per year, but less than 1 billion pounds per year . . . . . $ 7,000.00

Capacity of at least 1 billion pounds per year . . . . . $ 14,000.00

3321 - Gray Iron Foundries

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 3,125.00

Capacity of at least 100 million pounds per year . . . . . $ 6,250.00

3331 - Primary Copper Smelting and Refining

Smelting capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 9,375.00

Smelting capacity of at least 100 million pounds per year . . . . . $ 18,750.00

Refining capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 5,250.00

Refining capacity of at least 100 million pounds per year . . . . . $ 10,500.00

3334 - Primary Aluminum

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 6,875.00

Capacity of at least 100 million pounds per year . . . . . $ 13,750.00

3339 - Primary Nonferrous Metals

Capacity of at least 10 million pounds per year, but less than 100 million pounds per year . . . . . $ 3,625.00

Capacity of at least 100 million pounds per year . . . . . $ 7,250.00

3341 - Secondary Nonferrous Metals

Capacity of at least 1 million pounds per year, but less than 20 million pounds per year . . . . . $ 6,625.00

Capacity of at least 20 million pounds per year . . . . . $ 13,250.00

3354 - Aluminum Extruded Products

Capacity of at least 500,000 pounds per year, but less than 10 million pounds per year . . . . . $ 2,250.00

Capacity of at least 10 million pounds per year . . . . . $ 4,500.00

3355 - Aluminum Rolling and Drawing

Capacity of at least 500,000 pounds per year, but less than 10 million pounds per year . . . . . $ 4,750.00

Capacity of at least 10 million pounds per year . . . . . $ 9,500.00

3411 - Metal Cans

Capacity of at least 10 million cans per year, but less than 50 million cans per year . . . . . $ 5,875.00

Capacity of at least 50 million cans per year . . . . . $ 11,750.00

3585 - Refrigeration and Heating Equipment

Accounts with more than 500 employees . . . . . $ 6,875.00

3624 - Carbon and Graphite Products

Accounts with more than 1,000 employees . . . . . $ 5,125.00

3661 - Telephone and Telegraph Apparatus

Accounts with more than 1,000 employees . . . . . $ 4,250.00

3663, 3669 - Communications Equipment

Accounts with more than 1,000 employees . . . . . $ 5,625.00

3674 - Semiconductors and Related Devices

Accounts with more than 1,000 employees . . . . . $ 5,125.00

3711 - Motor Vehicles

Capacity of at least 1,000 vehicles per year, but less than 10,000 vehicles per year . . . . . $ 5,250.00

Capacity of at least 10,000 vehicles per year . . . . . $ 10,500.00

3721 - Aircraft Manufacturing Plants

Accounts with at least 200 but less than 1,000 employees . . . . . $ 1,875.00

Accounts with at least 1,000 but less than 5,000 employees . . . . . $ 5,625.00

Accounts with at least 5,000 employees . . . . . $ 11,250.00

3743 - Railroad Equipment

Accounts with more than 25 employees . . . . . $ 5,875.00

4226 - Storage and Terminal Facilities for Petroleum and Chemical Products

Capacity of at least 50,000 gallons tankage and 20,000 gallons per day throughput . . . . . $ 7,250.00

4491 - Marine Cargo Handling

Capacity of at least 25 tons per day of product . . . . . $ 4,500.00

4789 - Transportation Services

Railcar repair, cleaning or painting accounts with at least 25 employees	$ 2,875.00
Truck cleaning and painting accounts with at least 25 employees	$ 4,375.00
Independent pipeline terminals with throughput of at least 20,000 gallons per day, but less than 200,000 gallons per day for all petroleum liquids except crude oil	$ 3,625.00
Independent pipeline terminals with throughput of at least 200,000 gallons per day for all petroleum liquids except crude oil	$ 7,250.00

4911 - Electric Services

Capacity of at least 25 megawatts, but less than 100 megawatts (includes cogeneration units)	$ 5,000.00
Capacity of at least 100 megawatts	$ 10,000.00

4922, 4923, 4924, 4925 - Natural Gas Transmission/Distribution

Capacity of at least 10,000 horsepower from fossil fuel-fired engines	$ 2,875.00

4952 - Sludge Drying and Incineration

Capacity of at least 5 tons per hour drying or 500 pounds per hour incineration (wet basis)	$ 3,750.00

4961 - Steam Supply

Capacity of at least 250 million Btu per hour	$ 7,500.00

5093 - Scrap Metal Reclamation

Capacity of at least 1 ton per day metal reclamation by incineration or melting	$ 3,750.00
Metal reclamation by shredding	$ 625.00

5169 - Distribution of Chemicals and Allied Products

Throughput of at least 20,000 gallons per day	$ 3,375.00

5171 - Petroleum and Petroleum Product Bulk Stations and Terminals

Throughput of at least 20,000 gallons per day, but less than 200,000 gallons per day for all petroleum liquids except crude oil. Crude oil facilities with tankage of at least 5,000 but less than 10,000 barrel capacity and no floating roof for control of emissions, or tankage of at least 100,000 but less than 200,000 barrel capacity with floating roof controls	$ 3,625.00
Throughput of at least 200,000 gallons per day for all petroleum liquids except crude oil. Crude oil facilities with tankage of at least 10,000 barrel capacity with no floating roof for control of emissions, or tankage of at least 200,000 barrel capacity with floating roof controls	$ 7,250.00

9711 - Defense Plants and Military Bases

Defense plants with at least 100 employees, or military bases with more than 1,000 employees	$ 9,875.00

(e) Nonpayment of fees. Each inspection fee payment must be received by the due date specified in subsection (c) of this section. Failure to remit the full inspection fee by the due date shall result in enforcement action under the Texas Clean Air Act, Texas Health and Safety Code, §382.082 or §382.088. In addition, the Texas Clean Air Act, Texas Health and Safety Code, §382.091(a)(2), makes it a criminal offense to intentionally or knowingly fail to pay a required fee. The provisions of this section, as first adopted and as amended thereafter, are and shall remain in effect for purposes of any unpaid fee assessments, and the fees assessed pursuant to such provisions as adopted or as amended remain a continuing obligation.

(f) Late payment penalties. The owner or operator of an account failing to make payment of inspection fees when due shall be assessed late payment penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

Adopted January 22, 1997 Effective February 14, 1997

§101.26. Surcharge on Fuel Oil in Specified Boilers.

(a) Applicability. The owner or operator of an industrial or utility boiler as defined in §101.1 of this title (relating to Definitions), with a heat input capacity of greater than 10.0 million British Thermal Unit (MBtu) per hour capable of using natural gas shall remit to the Texas Natural Resource Conservation Commission (TNRCC) a clean fuel incentive surcharge of $0.20 per MBtu on fuel oil used on or between April 15 and October 15 of each year. Provisions of this section apply only to industrial and utility boilers located in consolidated metropolitan statistical areas or metropolitan statistical areas with a population of 350,000 or more which have not met the national ambient air quality standard for ozone.

(b) Exemptions. The owner or operator of an industrial or utility boiler affected by subsection (a) of this section is exempt from the surcharge in the following circumstances:

(1) burning of the following oils as defined for purposes of energy recovery or disposal, provided that such burning activities are approved or permitted by the TNRCC and/or the United States Environmental Protection Agency:

(A) Used oil - Any oil that has been refined from crude oil, has been used, and, as a result of such use, is contaminated by physical or chemical impurities;

(B) Hazardous waste-derived oil - Any oil that has been produced by processing, blending, or other treatment using hazardous wastes, as defined in §101.1 of this title (relating to Definitions).

(C) Waste oil - Any by-product or co-product oil resulting from crude oil refining or petrochemical production, which is used for energy recovery on-site, provided such use does not exceed 5% of the manufacturing complex's fuel consumption, and any by-product oil resulting from crude oil refining or petrochemical production, which is used for energy recovery on-site, if the material has no commercial value and would otherwise be "class I industrial solid waste" or "hazardous waste." For purposes of this definition, "on-site" includes facilities which are adjacent, contiguous, or physically interconnected;

(2) fuel oil use during documented periods of full or partial natural gas curtailment or during documented periods when insufficient natural gas is available to satisfy contractual obligations, or in the event of catastrophic events as defined in the Texas Clean Air Act (the TCAA), §382.063(j);

(3) fuel oil use in equipment testing or personnel training if limited to an aggregate of the equivalent of 48 hours full-load operation between April 15 through October 15; or

(4) fuel oil use under a fixed-price contract with a public works agency entered into prior to August 28, 1989.

(c) Recordkeeping. The owner or operator of an industrial or utility boiler as defined in §101.1 of this title (relating to Definitions), with a heat input capacity of greater than 10.0 MBtu per hour capable of using natural gas shall maintain records of fuel usage, including amounts and types of fuels used during April 15 to October 15 of each year. Provisions of this section apply only to industrial and utility boilers located in consolidated metropolitan statistical areas, or metropolitan statistical areas with a population of 350,000 or more which have not met the national ambient air quality standard for ozone. The fuel usage record should include documentation of any fuel oil burned as allowed by subsection (b) of this section. The fuel usage record for each year shall be maintained for two years and made available to authorized representatives of the TNRCC and/or local air pollution control agencies upon request.

(d) Payment. Surcharges shall be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission annually by December 31, beginning in 1990. A fuel usage report documenting the amount and types of fuel used during April 15 through October 15 for each boiler affected by subsection (a) of this section shall accompany any surcharge remitted. The fuel usage report shall also include the company name, mailing address, property address, TNRCC account number, and

the name and telephone number of the person to contact in case questions arise regarding the surcharge payment.

(e) Nonpayment of surcharge. Failure to remit the fuel surcharge payment by December 31 shall result in action under the TCAA, §382.088 or §382.082.

Adopted April 20, 1990 Effective June 8, 1990

§101.27. Emissions Fees.

(a) Applicability. The owner or operator of each account to which this rule applies, as defined in this subsection, shall remit to the Texas Natural Resource Conservation Commission (TNRCC) an emissions fee each fiscal year. A fiscal year is defined as the period from September 1 through August 31. A fiscal year, having the same number as the next calendar year, begins on the September 1 prior to that calendar year. An account subject to both an emissions fee and an inspection fee, pursuant to §101.24 of this title (relating to Inspection Fees), is required to pay only the greater of the two fees. For purposes of this section, an account shall be defined as all of the facilities located at a property including those that are permitted, non-permitted, exempted, and grandfathered. Properties under common ownership, but containing separate operations, or managed independently, or carried on the records of this agency under separate account numbers, will be charged a separate fee for each such account, even if the properties are contiguous or are contiguous except for intervening roads, railroads, rights-of-way, waterways, and the like. Provisions of the section apply to all accounts, including accounts which have not been assigned specific TNRCC Office of Air Quality (OAQ) account numbers. The owner or operator of an account subject to an emissions fee requirement is responsible for contacting the appropriate TNRCC regional office to obtain an account number. The OAQ will not initiate the combination or separation of accounts solely for fee assessment purposes. If an account is operated at any time during the fiscal year for which the fee is assessed, a full emissions fee is due. If OAQ is notified in writing that the plant is not and will not be in operation during that fiscal year, a fee will not be due. All regulated air pollutants, as defined in subsection (c)(3) of this section, including, but not limited to, those emissions from point and fugitive sources during normal operations with the exception of (for applicability purposes only) hydrogen, oxygen, carbon dioxide, water, nitrogen, methane, and ethane, are used to determine applicability of this section. In accordance with rules proposed by the United States Environmental Protection Agency (EPA) at 40 Code of Federal Regulations (CFR) 70, concerning the use of fugitive emissions in major source determinations, fugitive emissions shall be considered toward applicability of this section only for those source categories listed at 40 CFR 51.166(b)(1)(iii). For purposes of this section, an affected account shall have met one or more of the following conditions:

(1) the account has the potential to emit, at maximum operational or design capacity, 100 tons per year (tpy) or more of any single air pollutant;

(2) the account has the potential to emit, at maximum operational or design capacity, 50 tpy or more of volatile organic compounds (VOC) or nitrogen oxides (NO_x) and is located in El Paso, Hardin, Jefferson, or Orange Counties, or any other serious ozone nonattainment area;

(3) the account has the potential to emit, at maximum operational or design capacity, 25 tpy or more of VOC or NO_X and is located in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, or Waller Counties, or any other severe ozone nonattainment area;

(4) the account emits 10 tpy or more of a hazardous air pollutant, as defined in the Federal Clean Air Act (FCAA) Amendments of 1990, Title III;

(5) the account emits an aggregate of 25 tpy or more of hazardous air pollutants, as defined in the FCAA Amendments of 1990, Title III;

(6) the account is subject to the National Emission Standards for Hazardous Air Pollutants (40 CFR 61) that apply to nontransitory sources;

(7) the account is subject to New Source Performance Standards (40 CFR 60);

(8) the account is subject to Prevention of Significant Deterioration (40 CFR 52) requirements; or

(9) the account is subject to Acid Deposition provisions in the FCAA Amendments of 1990, Title IV.

(b) Payment. Fees shall be remitted by check or money order made payable to the TNRCC and sent to the TNRCC address printed on the fee return form. A completed fee return form shall accompany fees remitted. The fee return form shall include, at least, the company name, mailing address, site name, OAQ account number, Standard Industrial Classification (SIC) category, the allowable levels and/or actual emissions of all regulated air pollutants at the account for the reporting period, and the name and telephone number of the person to contact in case questions arise regarding the fee payment.

(c) Basis for fees.

(1) The emissions fee shall be based on allowable levels and/or actual emissions at the account during the last full calendar year preceding the beginning of the fiscal year for which the fee is assessed. For purposes of this section, the term "allowable levels" are those limits as specified in an enforceable document such as a permit or Commission Order which are in effect on the date the fee is due. The fee applies to the tonnage of regulated pollutants at the account, including those emissions from point and fugitive sources during normal operations. Although certain fugitive emissions are excluded for applicability determination purposes pursuant to subsection (a) of this section, all fugitive emissions must be considered for fee calculations after applicability of the fee has been established. A maximum of 4,000 tons of each regulated pollutant will be used for fee calculations. The fee for each fiscal year is set at the following rates.

Fiscal Year	Rate Per Ton	Minimum Fee
1992	$3	
1993	$5	$25

1994	$25	$25
1995	$26	$26
1996	$26	$26
1997	$26	$26

The rate of $26 per ton will remain effective for future fiscal years until amended. If the fee is applicable, the company responsible for the account shall pay the calculated emissions fee or the minimum fee, whichever is greater.

(2) The emissions tonnage for the account for fee calculation purposes will be the sum of those allowable levels and/or actual emissions for individual emission points or process units at the account rounded up to the nearest whole number, as follows.

(A) Where there is an enforceable document, such as a permit or Commission Order, establishing allowable levels, actual emissions may be used only if a completed Emissions Inventory Questionnaire for the account is submitted with the fee payment. For stacks or vents, the inventory must include verifiable data based on continuous emission monitor measurements, other continuously monitored values, such as fuel usage and fuel analysis, or stack testing performed during normal operations using EPA approved methods and quality-assured by OAQ. All measurements, monitored values, or testing must have been performed during the basis year as defined in subsection (c)(1) of this section or if not performed during the basis year, must be representative of the basis year as defined in subsection (c)(1) of this section. Actual emission rates may be based upon calculations for fugitive sources, flares, and storage tanks. Actual production, throughput, and measurement records must be submitted, along with complete documentation of calculation methods. Thorough justification is required for all assumptions made and factors used in such calculations. If the actual emissions rate submitted for fee purposes is less than 60% of the allowable emission rate, an explanation of the discrepancy must be submitted. Where inadequate or incomplete documentation is submitted, the executive director may direct that the fee be based on allowable levels. Where a complete and verifiable inventory is not submitted, allowable levels shall be used.

(B) Where there is not an enforceable document, such as a permit or a Commission Order, establishing allowable levels actual emissions shall be used. Actual production, throughput, or measurement records must be submitted along with complete documentation of calculation methods. Thorough justification is required for all assumptions made and factors used in such calculations.

(3) For purposes of this section, the term "regulated pollutant" shall include any volatile organic compound, any pollutant subject to the Federal Clean Air Act (FCAA), §111, any pollutant listed as a hazardous air pollutant under the FCAA, §112, each pollutant for which a national primary ambient air quality standard has been promulgated (including carbon monoxide), and any other air pollutant subject to requirements under TNRCC rules, regulations, permits, orders of the commission, or court orders. The term "normal operations" shall mean all operations other than those reported to the TNRCC in response to the requirements of §101.6 of this title (relating to Notification Requirements for Major Upset) or §101.7 of this title (relating to Notification Requirements for Maintenance).

(d) Due date. Fee payments shall be made annually and must be received by the TNRCC or postmarked no later than November 1 of the fiscal year in which the fee is assessed. If an account commences or resumes operation after November 1 of the fiscal year in which the fee is assessed, the full emissions fee will be due prior to commencement or resumption of operations.

(e) Nonpayment of fees. Each emissions fee payment must be received by the due date specified in subsection (d) of this section. Failure to remit the full emissions fee by the due date shall result in enforcement action under the Texas Clean Air Act, Texas Health and Safety Code, §382.082 or §382.088. In addition, the Texas Clean Air Act, Texas Health and Safety Code, §382.091(a)(2), makes it a criminal offense to intentionally or knowingly fail to pay a required fee. The provisions of this section, as first adopted and amended thereafter, are and shall remain in effect for purposes of any unpaid fee assessments, and the fees assessed pursuant to such provisions as adopted or as amended remain a continuing obligation.

(f) Late payment penalties. The owner or operator of an account failing to make payment of emissions fees when due shall be assessed late payment penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

Adopted January 22, 1997 Effective February 14, 1997

§101.28. (RESERVED)

§101.29. Emissions Banking.

(a) Applicable pollutants. Qualified reductions of volatile organic compounds (VOC) as defined in §101.1 of this title (relating to Definitions) and nitrogen oxides (NO_x) shall be eligible for deposit in the Bank. Interpollutant trading, for example, using a NO_x credit to offset a VOC emission is not allowed.

(b) Applicable areas. The only geographical areas in which eligible sources may participate in the emissions banking program are the federally designated ozone nonattainment areas.

(c) Eligible source. The following sources are eligible to participate in the emissions banking program for a designated ozone nonattainment area:

(1) any stationary source;

(2) any area source;

(3) any mobile source registered in the designated ozone nonattainment area; and

(4) any non-road mobile source or area source associated with actions by federal agencies under the General Conformity Rules.

(d) Length of time available. A certified Emissions Reduction Credit (ERC), generated by a stationary source, is available for use during the ten-year period after the reduction was actually achieved. The banking applicant shall identify the date the reduction was actually achieved. The ERC certificate shall indicate the expiration date for the certified reduction. If an ERC is withdrawn from the bank prior to the ten-

year expiration and submitted with a complete permit application for use as an offset, the ERC remains usable for the lifetime of the new facility or modification proposed for offset. The length of time a certified Mobile Source Emission Reduction Credit (MERC) is available for use is a function of the remaining vehicle miles of the mobile source, as determined in the Accelerated Vehicle Retirement program and Alternative Fuel Requirements for Motor Vehicle Fleets. The Bank expiration date and useful life of the credit is calculated from the date the MERCs are certified.

(e) ERC and MERC certification or registration.

(1) ERCs will be certified for any emissions reduction of a minimum of ten tons per year (tpy) VOC or ten tpy NO_x, and which has been registered in accordance with this section, in the following priority order:

(A) reductions resulting from shutdowns;

(B) reductions from facilities with two years of continuous emissions monitoring data prior to the reduction and a permit allowable limit with a provision for continuous emissions monitoring;

(C) reductions from facilities that have had a permit issued, amended, or renewed which included a review of the reduced source(s) no more than two years prior to the reduction;

(D) reductions from facilities with standardized calculating methods such as storage tanks, loading operations, coating operations, and alternative solvents;

(E) any other reductions as resources are available to complete the certification.

(2) The MERCs will be certified by the Texas Natural Resource Conservation Commission Emissions Bank for any emission reduction which has been registered in accordance with the specific requirements of the Accelerated Vehicle Retirement program or the Alternative Fuel Requirements for Motor Vehicle Fleets.

(3) The executive director shall have the discretion, subject to commission approval, to temporarily suspend the certification of applications for emission reduction credits if necessary to efficiently manage workloads in accordance with agency priorities. Registered credits need not be certified in order to be transferable.

(4) Emission reduction amounts shall be determined and certified based on actual monitoring results, when available, or otherwise calculated using good engineering practices. The MERCs will be determined and certified using the methodologies provided in the Accelerated Vehicle Retirement program and Alternative Fuel Requirements for Motor Vehicle Fleets. An ERC certificate will be issued by the executive director which indicates the amount of certified emissions reduction which is available for use and the length of time the reduction is eligible for use. A MERC certificate will be issued by the executive director which indicates the total amount of certified emission reduction credits, the quantity available on an annual basis, and the date upon which the last annualized emission reduction expires.

(f) Qualified reduction. A qualified reduction is a reduction in emissions of an applicable pollutant from an eligible source located in an applicable area, which results in an actual and permanent emissions decrease below that required by applicable state or federal law, regulation, or Agreed Order. Unless otherwise specified, the reduction shall have occurred after January 1, 1990. The reduced emissions level must be federally enforceable for the reduction to qualify. Emissions reductions may come from any eligible sources, including stationary, area, and mobile sources. The executive director shall have the authority to inspect and request information to assure that the emissions reduction has been actually achieved. Qualified reductions include, but are not limited to, the following:

(1) an actual emissions reduction resulting from a permanent shutdown of equipment after January 1, 1990, and which causes a loss of capability to produce emissions that were reported in the 1990 or later emissions inventory;

(2) an actual emissions reduction resulting from the installation of a level of control, after January 1, 1990, greater than that which is required by regulation, Agreed Order, or State Implementation Plan provision if the applicant accepts a permit provision specifying a lower level of emissions;

(3) an actual emissions reduction resulting from the installation of different processes or equipment, after January 1, 1990, which emit less than the previous processes or equipment that performed the same function if the applicant accepts a permit provision specifying a lower level of emissions;

(4) an actual emissions reduction resulting from more effective operation and maintenance of abatement and process equipment, after January 1, 1990, if the applicant accepts a permit provision specifying a lower level of emissions;

(5) an actual emissions reduction resulting from a reduction in production rates, or a restriction on hours of operations, after January 1, 1990, if the applicant accepts a permit provision specifying a lower level of emissions, a limit at that production rate, or restricted operating hours;

(6) an actual emission reduction resulting from the utilization of vehicles beyond the established emissions standard and/or the fleet percentages as required by the Texas Alternative Fuel Fleet program which has occurred after January 1, 1992;

(7) an actual emissions reduction, after January 1, 1995, resulting from the accelerated retirement of high-emitting vehicles; and

(8) any other actual emissions reduction which the executive director or the United States Environmental Protection Agency approves as a qualified reduction.

(g) Withdrawal of ERCs. Certified ERCs can be withdrawn only for use within the same designated ozone nonattainment area and for the following purposes:

(1) providing offsets for new sources;

(2) providing offsets for modifications to an existing source;

(3) providing mitigation offsets for action by federal agencies under the General Conformity Rules; or

(4) netting by the original applicant.

(h) Withdrawal of MERCs.

(1) Certified MERCs can be transferred or withdrawn only for use within the same designated ozone nonattainment area and for the following purposes:

(A) extending a compliance deadline for up to the life of the credit to the extent allowed in any provision of Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) and §117.540 of this title (relating to Phased Reasonably Available Control Technology (RACT);

(B) complying with fleet requirements to the extent allowed by the Alternative Fuel Requirements for Motor Vehicle Fleets;

(C) providing offsets for short-term emission increases that require a permit amendment;

(D) providing offsets for modifications to an existing source; or

(E) providing offsets for a new source at an existing facility.

(2) When MERCs are used for the purposes put forth in paragraph (1)(C) - (E) of this subsection, offsets will be required, upon the expiration of the MERCs, through internal emission reductions (netting) or the purchase of additional MERCs or ERCs, or the facility will be required to shut down the emission source.

(i) Trading between adjacent nonattainment areas in transport regions. ERCs generated in one designated ozone nonattainment area cannot be traded to an adjacent ozone nonattainment area.

(j) Depreciation. The executive director is prohibited from depreciating any ERC or MERC, except under the following circumstances:

(1) the ERC or MERC certificate has expired; or

(2) regulatory changes were promulgated after the ERC or MERC certificate has been issued, which would have required reductions from the source that created the qualifying reduction. The credit shall be reduced by the amount affected by the regulatory change.

(k) The ERC and MERC use. The use of ERCs and MERCs will be accomplished either through transfers or withdrawals.

(1) Transfer. The ERCs and MERCs may be freely transferable, in whole or in part, and may be sold or conveyed in any manner in accordance with the laws of the State of Texas. The executive director shall be notified within 30 days of any transfer of the credit to another party. The old certificate shall be submitted to the executive director, who shall then issue a new certificate indicating the new owner. In the case of a partial transfer, the executive director shall issue a new certificate to the new owner as well as a revised certificate to the current owner reflecting the available credits to each owner.

(2) Withdrawal. Only the owner of the certificate is eligible to withdraw deposits from the bank. Once a certificate has been issued, the ERC or MERC shall be valid for the time period indicated on the certificate, unless the certificate has been depreciated in accordance with subsection (j) of this section. Certified emission reduction credits may be withdrawn from the Bank by the original applicant at any time prior to the expiration of the credit and may be held by the original applicant to be used for netting purposes. The ERCs held by the original applicant may not be used for offsets after the expiration of the ten-year period following the date of the emission reduction, but may continue to be used for netting to the extent allowed under applicable state and federal regulations. The ERCs will be depreciated under subsection (j)(2) of this section if applicable.

(l) Program administration. The administration of the emissions banking program includes deposit registration, deposit certification, and ERC and MERC transfer and withdrawal.

(1) Deposit registration. A deposit registration of a qualified ERC in the Bank is voluntary. A MERC must be deposited in the Bank before ownership can be transferred or used by the owner as described in subsection (h) of this section. Deposit registrations should be submitted in an approved format to the executive director. The executive director shall annotate the deposit registration with the date of receipt. If the executive director determines that the emissions reduction does not qualify for registration, the applicant shall be notified, within 60 calendar days of receipt of the registration, with a letter which states the reasons for registration denial.

(2) Deposit certification. The executive director will certify emissions reduction credits in accordance with the guidelines stated in subsection (e) of this section. The applicant shall be notified in writing of the executive director's certification decision. If the decision is to grant the ERC or MERC as registered, the ERC or MERC certificate shall be mailed to the owner. If the decision is to grant less credit than the deposit registration or to deny certification, the letter shall state the specific reasons for the decision. The applicant will then have 30 days to respond in writing to the executive director. If the executive director affirms the certification decision, the applicant may appeal to the TNRCC. The TNRCC, at its option, may hear the appeal directly or may appoint a hearing examiner to obtain evidence from the applicant and staff and provide an advisory opinion to the TNRCC. Such a hearing shall be conducted in accordance with the rules of evidence, but need not meet all the formal procedures for a contested case hearing. If called, the hearing shall be held within 60 days of the executive director's receipt of the applicant appeal. The hearing examiner report shall be submitted to the TNRCC within 30 days of the close of the hearing.

(3) The ERC or MERC withdrawal. The owner of an ERC or MERC certificate shall submit an application for withdrawal in a format approved by the executive director. The executive director shall have 30 calendar days to review the application. Upon notification of approval, the old certificate shall be submitted to the executive director as part of the nonattainment review permit application that requires offsets or in accordance with the procedures for other authorized uses of ERCs or MERCS. The executive

director shall remove the credits from the Bank and issue a new certificate if any reduction credit is remaining. If the executive director denies the application, the applicant may appeal to the TNRCC. The appeal will be handled in accordance with the procedures for appeal of decisions affecting deposit applications.

(m) Public access. It is the goal of the TNRCC to establish a computerized data base which will allow the public to ascertain the amount of reductions which are registered or banked in each designated ozone nonattainment area. In lieu of a computerized data base, a paper copy of the amount of reductions which are registered or banked will be available at the TNRCC central office and the TNRCC regional office associated with each ozone nonattainment area. The registry shall not contain proprietary information.

Adopted October 11, 1995 Effective November 6, 1995

§101.30. Conformity of General Federal Actions to State Implementation Plans.

(a) Purpose.

(1) The purpose of this rule is to implement §176(c) of the Federal Clean Air Act (FCAA), as amended (42 United States Code 7401 et seq.) and regulations under the Code of Federal Regulations (CFR) 40 CFR Part 51 Subpart W, with respect to the conformity of general federal actions with the applicable state implementation plan (SIP). Under those authorities, no department, agency, or instrumentality of the federal government shall engage in; support in any way or provide financial assistance for; license or permit; or approve any activity which does not conform to an applicable SIP. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such action to the applicable SIP.

(2) Under FCAA, §176(c) and 40 CFR Part 51 Subpart W, a federal agency must make a determination that a federal action conforms to the applicable SIP in accordance with the requirements of this rule before the action is taken, with the exception of federal actions where either:

(A) a National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

(B) prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis; and sufficient environmental analysis is completed by March 15, 1994, so that the federal agency may determine that the federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under the FCAA, §176(c); and a written determination of conformity under the FCAA, §176(c) has been made by the federal agency responsible for the federal action by March 15, 1994.

(3) Notwithstanding any provision of this rule, a determination that an action is in conformity with the applicable SIP does not exempt the action from any other requirements of the applicable SIP, the NEPA, or the FCAA.

(b) Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (TNRCC or Commission), the terms used by the Commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Affected federal land manager** - The federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the FCAA (42 United States Code §7472) that is located within 100 kilometers of the proposed federal action.

(2) **Applicable state implementation plan (SIP)** - The portion (or portions) of the SIP, or most recent revision thereof, which has been approved under the FCAA, §110 or promulgated under the FCAA, §110(c) (Federal Implementation Plan or FIP), or promulgated or approved pursuant to regulations promulgated under the FCAA, §301(d) and which implements the relevant requirements of the FCAA.

(3) **Areawide air quality modeling analysis** - An assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

(4) **Cause or contribute to a new violation** - A federal action that:

(A) causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the federal action were not taken; or

(B) contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

(5) **Cause by**, as used in the terms "direct emissions" and "indirect emissions," - Emissions that would not otherwise occur in the absence of the federal action.

(6) **Criteria pollutant or standard** - Any pollutant for which there is established a NAAQS in 40 CFR, Part 50.

(7) **Direct emissions** - Those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action.

(8) **Emergency** - A situation where extremely quick action on the part of the federal agencies involved is needed, and where the timing of such federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, and civil disturbances such as terrorist acts and military mobilizations.

(9) **Emissions budgets** - Those portions of the total allowable emissions defined for a certain date in a revision to the applicable SIP for the purpose of meeting reasonable further progress

milestones, attainment demonstrations, or maintenance demonstrations; for any criteria pollutant or its precursors allocated by the applicable implementation to mobile sources, to any stationary source or class of stationary sources, to any federal action or class of actions, to any class of area sources, or to any subcategory of the emissions inventory. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable SIP.

(10) **Emissions offsets**, for purposes of subsection (h) of this section - Emissions reductions which are quantifiable; consistent with the applicable SIP attainment and reasonable further progress demonstrations; surplus to reductions required by and credited to other applicable SIP provisions; enforceable under both state and federal law; and permanent within the time frame specified by the program. Emissions reductions intended to be achieved as emissions offsets under this rule must be monitored and enforced in a manner equivalent to that under the United States Environmental Protection Agency's (EPA) new source review requirements.

(11) **Emissions that a federal agency has a continuing program responsibility for** - Emissions that are specifically caused by an agency carrying out its authorities, but does not include emissions that occur due to subsequent activities, unless such activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

(12) **Federal action** - Any activity engaged in by a department, agency, or instrumentality of the federal government, or any activity that a department, agency, or instrumentality of the federal government supports in any way; provides financial assistance for; licenses, permits, or approves. Activities related to transportation plans, programs, and projects developed, funded, or approved under Title 23 United States Code or the Federal Transit Act (49 United States Code §1601 et seq.) are not considered to be federal actions under general conformity. Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant activity is the part, portion, or phase of the nonfederal undertaking that required the federal permit, license, or approval.

(13) **Federal agency** - A federal department, agency, or instrumentality of the federal government.

(14) **Increase the frequency or severity of any existing violation of any standard in any area** - To cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

(15) **Indirect emissions** - This term does not have the same meaning as given to an indirect source of emissions under §110(a)(5) of the FCAA, but for general conformity are those emissions of a criteria pollutant or its precursors that:

(A) are caused by the federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable; and

(B) the federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency, including, but not limited to:

(i) traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility;

(ii) emissions related to the activities of employees of contractors or federal employees;

(iii) emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality;

(iv) emissions related to the use of federal facilities under lease or temporary permit;

(v) emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States;

(16) **Local air quality modeling analysis** - An assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

(17) **Maintenance area** - Any geographic region of the United States previously designated nonattainment pursuant to the FCAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under the FCAA, §175A.

(18) **Maintenance plan** - A revision to the applicable SIP, meeting the requirements of the FCAA, §175A.

(19) **Metropolitan Planning Organization (MPO)** - That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code §134 and 49 United States Code §1607.

(20) **Milestone** has the meaning given in the FCAA, §182(g)(1) and §189(c)(1) - A milestone consists of an emissions level and the date on which it is required to be achieved.

(21) **National Ambient Air Quality Standards (NAAQS)** - Those standards established pursuant to the FCAA, §109 and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM_{10}), and sulfur dioxide (SO_2).

(22) **NEPA** - The National Environmental Policy Act of 1969, as amended (42 United States Code §4321 et seq.).

(23) **Nonattainment area (NAA)** - Any geographic area of the United States which has been designated as nonattainment under the FCAA, §107 and described in 40 CFR, Part 81.

(24) **Presursors of a criteria pollutant** are:

(A) for ozone, nitrogen oxides (NO_x) (unless an area is exempted from NO_x requirements under the FCAA, §182(f)) and volatile organic compounds (VOC); and

(B) for PM_{10}, those pollutants described in the PM_{10} nonattainment area applicable SIP as significant contributors to the PM_{10} levels.

(25) **Reasonably foreseeable emissions** - Projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known to the extent adequate to determine the impact of such emissions; and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.

(26) **Regionally significant action** - A federal action for which the direct and indirect emissions of any pollutant represent 10% or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

(27) **Regional water or wastewater projects** - Projects which include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

(28) **Total of direct and indirect emissions** - The sum of direct and indirect emissions increases and decreases caused by the federal action; i.e., the "net" emissions considering all direct and indirect emissions. Any emissions decreases used to reduce such total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under subsection (c)(3), (4), (5), or (6) of this section are not included in the "total of direct and indirect emissions," except as provided in subsection (c)(10) of this section. The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses, when emissions are reasonably foreseeable, is not permitted by this rule.

(c) Applicability.

(1) Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 United States Code or the Federal Transit Act (49 United States Code §1601 et seq.) shall meet the procedures and criteria of §114.27 of this title, regarding Transportation Conformity, and the Transportation Conformity SIP, in lieu of the procedures set forth in this rule.

(2) For federal actions not covered by paragraph (1) of this subsection, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment

or maintenance area caused by a federal action would equal or exceed any of the rates in subparagraphs (A) or (B) of this paragraph.

(A) For purposes of paragraph (2) of this subsection, the following rates apply in nonattainment areas (NAAs):

	Tons/Year
Ozone (VOC or NO_x)	
Marginal or moderate NAAs inside an ozone transport region	
VOC	50
No_x	100
Other ozone NAAs outside an ozone transport region	100
Serious NAAs	50
Severe NAAs	25
Extreme NAAs	10
Carbon Monoxide	
All NAAs	100
SO_2 or NO_2	
All NAAs	100
PM_{10}	
Moderate NAAs	100
Serious NAAs	70
Pb	
All NAAs	25

(B) For purposes of paragraph (2) of this subsection, the following rates apply in maintenance areas:

	Tons/Year
Ozone (NO_x), SO_2, or NO_2	
All maintenance areas	100
Ozone (VOC)	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon Monoxide	
All maintenance areas	100
PM_{10}	
All maintenance areas	100
Pb	
All maintenance areas	25

(3) The requirements of this rule shall not apply to:

(A) actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (2) of this subsection;

(B) the following actions which would result in no emissions increase or an increase in emissions that is clearly *de minimis*:

(i) judicial and legislative proceedings;

(ii) continuing and recurring activities, such as permit renewals, where activities conducted will be similar in scope and operation to activities currently being conducted;

(iii) rulemaking and policy development and issuance;

(iv) routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities;

(v) civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel;

(vi) administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties, and fees;

(vii) the routine, recurring transportation of material and personnel;

(viii) routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups, or for repair or overhaul;

(ix) maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site;

(x) with respect to existing structures, properties, facilities, and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands, actions such as relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency;

(xi) the granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted;

(xii) planning, studies, and provision of technical assistance;

(xiii) routine operation of facilities, mobile assets, and equipment;

(xiv) transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer;

(xv) the designation of empowerment zones, enterprise communities, or viticultural areas;

(xvi) actions by any of the federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency, or instrumentality of the United States;

(xvii) actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy;

(xviii) actions that implement a foreign affairs function of the United States;

(xix) actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, titles, or real properties;

(xx) transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity for subsequent deeding to eligible applicants;

(xxi) actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States;

(C) actions where the emissions are not reasonably foreseeable, such as the following actions:

(i) initial outer continental shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level;

(ii) electric power marketing activities that involve the acquisition, sale, and transmission of electric energy;

(D) individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable SIP, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable SIP.

(4) Notwithstanding the other requirements of this rule, a conformity determination is not required for the following federal actions (or portion thereof):

(A) the portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (FCAA, §173) or the prevention of significant deterioration (PSD) program (Title I, Part C of the FCAA);

(B) actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (5) of this section;

(C) research, investigations, studies, demonstrations, or training other than those exempted under subsection (c)(3)(B) of this section, where no environmental detriment is incurred or the particular action furthers air quality research, as determined by the state agency primarily responsible for the SIP.

(D) alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations, e.g., hush houses for aircraft engines and scrubbers for air emissions.

(E) direct emissions from remedial and removal actions carried out under the CERCLA and associated regulations to the extent such emissions either comply with the substantive requirements of the NSR/PSD permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(5) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (4)(B) of this subsection and which are to be taken more than six months after the commencement of the response to the emergency or disaster under paragraph (4)(B) of this subsection are exempt from the requirements of this section only if:

(A) the federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests, and foreign policy commitments; or

(B) for actions which are to be taken after those actions covered by paragraph (5)(A) of this subsection, the federal agency makes a new determination as provided in paragraph (5)(A) of this subsection.

(6) Notwithstanding other requirements of this rule, individual actions or classes of actions specified by individual federal agencies that have met the criteria set forth in either paragraph (7)(A) or (B) of this subsection and the procedures set forth in paragraph (8) of this subsection are presumed to conform, except as provided in paragraph (10) of this subsection.

(7) The federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either subparagraph (A) or (B) of this paragraph:

(A) the federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(i) cause or contribute to any new violation of any standard in any area;

(ii) interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) increase the frequency or severity of any existing violation of any standard in any area; or

(iv) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP or purposes of:

(I) a demonstration of reasonable further progress;

(II) a demonstration of attainment; or

(III) a maintenance plan; or

(B) the federal agency shall provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (2) of this subsection, based, for example, on similar actions taken over recent years.

(8) In addition to meeting the criteria for establishing exemptions set forth in paragraph (7)(A) or (B) of this subsection, the following procedures must also be complied with to presume that activities will conform:

(A) the federal agency shall identify through publication in the *Federal Register* its list of proposed activities that are presumed to conform and the analysis, assumptions, emissions factors, and criteria used as the basis for the presumptions;

(B) the federal agency shall notify the appropriate EPA Regional Office, TNRCC, local air quality agencies and, where applicable, the Texas Department of Transportation (TxDOT) and the MPO, and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(C) the federal agency shall document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(D) the federal agency shall publish the final list of such activities in the *Federal Register*.

(9) Notwithstanding the other requirements of this rule, when the total of direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in paragraph (2) of this subsection, but represents 10% or more of a nonattainment or maintenance area's total emissions of that pollutant, then the action is defined as a regionally significant action and the requirements of subsections (a) and (e) - (j) of this section shall apply for the federal action.

(10) Where an action otherwise presumed to conform under paragraph (6) of this subsection is a regionally significant action or does not in fact meet one of the criteria in paragraph (7)(A) of this section, that action shall not be considered *de minimis* or presumed to conform and the requirements of subsections (a) and (e) - (j) of this section shall apply for the federal action.

(11) The provisions of this section shall apply in all nonattainment and maintenance areas.

(12) Any measures used to affect or determine applicability of this rule, as determined under this subsection, must result in projects that are in fact *de minimis*, must result in such *de minimis* levels prior to the time the applicability determination is made, and must be state and federally enforceable. Any

measures that are intended to reduce air quality impacts for this purpose must be identified (including the identification and quantification of all emission reductions claimed); and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation. Prior to a determination of applicability, the federal agency making the determination must obtain written commitments from the appropriate persons or agencies to implement any measures which are identified as conditions for making such determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence. After this implementation plan revision is approved by EPA, enforceability through the applicable SIP of any measures necessary for a determination of applicability will apply to all persons who agree to reduce direct and indirect emissions associated with a federal action for a conformity applicability determination.

(d) Conformity Analysis. Any federal department, agency, or instrumentality of the federal government taking an action subject to 40 CFR Part 51 Subpart W and this section shall make its own conformity determination consistent with the requirements of this rule. In making its conformity determination, a federal agency must consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency (to the extent the proposed action and impacts analyzed are the same as the project for which a conformity determination is required) or develop its own analysis in order to make its conformity determination.

(e) Reporting Requirements.

(1) A federal agency making a conformity determination under subsection (h) of this section shall provide to the appropriate EPA Regional Office, the TNRCC, local air quality agencies and, where applicable, affected federal land managers, TxDOT and the MPO, a 30-day notice which describes the proposed action and the federal agency's draft conformity determination on the action.

(2) A federal agency shall notify the appropriate EPA Regional Office, TNRCC, local air quality agencies and, where applicable, affected federal land managers, TxDOT and the MPO within 30 days after making a final conformity determination under subsection (h) of this section.

(3) As a matter of policy, the state will not make any determination under subsection (h)(1)(E)(i)(I) of this section or any commitment under subsection (h)(1)(E)(i)(II) of this section, unless the federal agency provides to the TNRCC information on all projects or other actions which may affect air quality or emissions in any area to which this rule is applicable, whether such project or action is determined to be subject to this rule under subsection (c) of this section. As a matter of policy, the emissions budget that would otherwise be available for projects of any federal agency under subsection (h) shall be reduced by 50% (or other percentage as the state determines) in the case of any federal agency that does not provide to the TNRCC information on all projects or other actions which may affect air quality or emissions in any area to which this rule is applicable, regardless of whether such project or action is determined to be subject to this rule under subsection (c) of this section.

(f) Public Participation and Consultation.

(1) Upon request by any person regarding a specific federal action, a federal agency shall make available for review its draft conformity determination under subsection (h) of this section with supporting materials which describe the analytical methods, assumptions, and conclusions relied upon in making the applicability analysis and draft conformity determination.

(2) A federal agency shall make public its draft conformity determination under subsection (h) of this section by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(3) A federal agency shall document its response to all the comments received on its draft conformity determination under subsection (h) of this section and make the comments and responses available, upon request by any person regarding a specific federal action, within 30 days of the final conformity determination.

(4) A federal agency shall make public its final conformity determination under subsection (h) of this section for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action within 30 days of the final conformity determination.

(g) Frequency of Conformity Determinations.

(1) The conformity status of a federal action automatically lapses five years from the date a final conformity determination is reported under subsection (e) of this section, unless the federal action has been completed or a continuous program has been commenced to implement that federal action within a reasonable time.

(2) Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redetermination so long as the emissions associated with such activities are within the scope of the final conformity determination reported under subsection (e) of this section.

(3) If, after the conformity determination is made, the federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in subsection (c)(1) of this section, a new conformity determination is required.

(h) Criteria for Conformity Determination of General Federal Actions.

(1) An action required under subsection (c) of this section to have a conformity determination for a specific pollutant, will be determined to conform to the applicable plan if, for each pollutant that exceeds the rates of subsection (c)(2) of this section, or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (3) of this subsection, and meets any of the following requirements:

(A) for any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP attainment or maintenance demonstration;

(B) for ozone or NO_2, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a measure similarly enforceable under state and federal law that effects emission reductions so that there is no increase in emissions of that pollutant;

(C) for any criteria pollutant, except ozone and NO_2, the total of direct and indirect emissions from the action shall meet the requirements:

(i) specified in paragraph (2) of this subsection, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(ii) specified in paragraph (1)(E) of this subsection and, for local air quality modeling analysis, the requirement of paragraph (2) of this subsection;

(D) for CO or PM_{10}:

(i) where the TNRCC determines, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on local air quality modeling analysis; or

(ii) where the TNRCC determines, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is appropriate, and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on areawide modeling, or meet the requirements of paragraph (1)(E) of this subsection;

(E) for ozone or nitrogen dioxide, and for purposes of paragraphs (1)(C)(ii) and (1)(D)(ii) of this subsection, each portion of the action or the action as a whole meets any of the following requirements:

(i) where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990, and the state makes a determination as provided in subclause (I) of this clause, or where the state makes a commitment as provided in subclause (II) of this clause. Any such determination or commitment shall be made in compliance with subsections (e) and (f) of this section.

(I) The total of direct and indirect emissions from the action, or portion thereof, is determined and documented by the TNRCC to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed the emissions budgets specified in the applicable SIP.

(II) The total of direct and indirect emissions from the action, or portion thereof, is determined by the TNRCC to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would exceed an emissions budget specified in the applicable SIP and the TNRCC makes a written commitment to EPA which includes the following:

(-a-) a specific schedule for adoption and submittal of a revision to the applicable SIP which would achieve the needed emission reductions prior to the time emissions from the federal action would occur;

(-b-) identification of specific measures for incorporation into the applicable SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(-c-) a demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the federal action, and that local authority to implement additional requirements has been fully pursued;

(-d-) a determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action. As a matter of TNRCC policy, a commitment will be made only if the TNRCC determines that the project sponsors and responsible federal agencies have sought all available emissions offsets and made all reasonably available modifications of the action to reduce emissions; and

(-e-) written documentation including all air quality analyses supporting the conformity determination.

(III) where a federal agency made a conformity determination based on a state commitment under subclause (II) of this clause, such a state commitment is automatically deemed to call for a SIP revision by EPA under the FCAA, §110(k)(5), effective on the date of the federal conformity determination and requiring response within 18 months or any shorter time within which the state commits to revise the applicable SIP;

(ii) the action or portion thereof, as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under §114.27 of this title (relating to Transportation Conformity), or the Transportation Conformity SIP, or 40 CFR Part 93, Subpart A;

(iii) the action, or portion thereof, fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP, or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) where EPA has not approved a revision to the relevant SIP, attainment demonstration, or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years as described in subsection (i)(4) of this section do not increase emissions with respect to the baseline emissions, and:

(I) the baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during:

(-a-) calendar year 1990;

(-b-) the calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR Part 81; or

(-c-) the year of the baseline inventory in the applicable PM_{10} SIP;

(II) the baseline emissions are the total of direct and indirect emissions calculated for the future years, described in subsection (i)(4) of this section using the historic activity levels described in subclause (I) of this clause and appropriate emission factors for the future years; or

(v) where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projects that are in the applicable SIP, based on assumptions regarding per capita use that are developed or approved in accordance with subsection (i)(1) of this section.

(2) The areawide and/or local air quality modeling analyses must:

(A) meet the requirements in subsection (i) of this section; and

(B) show that the action does not:

(i) cause or contribute to any new violation of any standard in any area; or

(ii) increase the frequency or severity of any existing violation of any standard in any area.

(3) Notwithstanding any other requirements of this section, an action subject to this rule may not be determined to conform to the applicable SIP, unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements; and such action is otherwise in compliance with all relevant requirements of the applicable SIP.

(4) Any analyses required under this section shall be completed, and any mitigation requirements necessary for a finding of conformity shall be identified in compliance with subsection (j) of this section, before the determination of conformity is made.

(i) Procedures for Conformity Determination of General Federal Actions.

(1) The analyses required under this rule shall be based on the latest planning assumptions.

(A) All planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, and the geographic distribution of population growth) shall be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or the state agency authorized under state law to make such estimates.

(B) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, shall be approved by the MPO or other agency authorized to make such estimates for the area.

(2) The analyses required under this rule must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

(A) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in the state or area shall be used for the conformity analysis as specified below:

(i) the EPA must have published in the *Federal Register* a notice of availability of any new motor vehicle emissions model; and

(ii) a grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period, or no more than three years before the *Federal Register* notice of availability of the latest emission model, may continue to use the previous version of the model specified by EPA.

(B) For nonmotor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" shall be used for the conformity analysis unless more accurate emissions data are available, such as actual stack test data for stationary sources which are part of the conformity analysis.

(3) The air quality modeling analyses required under this rule must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication number 450/2-78-027R), unless:

(A) the guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program; and

(B) written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(4) The analyses required under this rule shall be based on the total of direct and indirect emissions from the action and shall reflect emission scenarios that are expected to occur under each of the following cases:

(A) the FCAA mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(B) the year during which the total of direct and indirect emissions from the action for each pollutant analyzed is expected to be the greatest on an annual basis; and

(C) any year for which the applicable implementation plan specifies an emissions budget.

(j) Mitigation of air quality impacts.

(1) Any measures that are intended to mitigate air quality impacts shall be identified (including the identification and quantification of all emissions reductions claimed); and the process for implementation (including any necessary funding of such measures and tracking of such emissions reductions), and enforcement of such measures shall be described, including an implementation schedule containing explicit timelines for implementation.

(2) Prior to determining that a federal action is in conformity, the federal agency making the conformity determination shall obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with paragraph (1) of this subsection.

(3) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations shall comply with the obligations of such commitments.

(4) In instances where the federal agency is licensing, permitting, or otherwise approving the action of another governmental or private entity, approval by the federal agency shall be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination, as provided in paragraph (1) of this subsection.

(5) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination in accordance with subsections (h) and (i) of this section and this paragraph. Any proposed change in the mitigation measures is subject to the reporting requirements of subsection (e) of this section and the public participation requirements of subsection (f) of this section.

(6) Written commitments to mitigation measures shall be obtained prior to positive conformity determination and such commitments must be fulfilled.

(7) After this implementation plan revision is approved by EPA, any agreements, including mitigation measures, necessary for a conformity determination will be both state and federally enforceable.

Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

(k) Savings Provisions. The federal conformity rules under 40 CFR Part 51 Subpart W establish the conformity criteria and procedures necessary to meet the requirements of the FCAA §176(c) until such time as this conformity SIP revision is approved by EPA. Following EPA approval of this SIP revision (or a portion thereof), the approved (or approved portion of the) state criteria and procedures would govern conformity determinations, and the federal conformity regulations contained in 40 CFR Part 93 would apply only for the portion, if any, of the state's conformity provisions that is not approved by EPA.

Adopted June 25, 1997 Effective July 16, 1997